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IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

HOWARD A. ENGLE, M.D., et al., Plaintiff, -vs- RJ REYNOLDS TOBACCO COMPANY, et al., Defendants.	CASE NO: 94-08273 CA (22)

COPY

201 S. Biscayne Boulevard
Miami, Florida
Thursday, 9:15 a.m.
September 3, 1998

D E P O S I T I O N

of

ERIC J. SOLBERG

taken on behalf of the Defendant Philip Morris, Inc. pursuant to Notice of Taking Deposition

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Thereupon:

ERIC J. SOLBERG

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McCONNELL:

Q. Would you state your name for the record, please?

A. My whole name?

Q. Yes.

A. Eric J. Solberg. John, middle name.

Q. Mr. Solberg, you were deposed earlier in this case in Houston, correct?

A. That's correct.

Q. Since that deposition, you have produced additional documents that you are relying upon for your opinions in this case, correct?

A. That is correct.

Q. How did you select those documents?

A. I went through a number of boxes that I had saved, articles, manuscripts, journals, lay publications that I had used in the preparation of my thesis, and subsequently some of the work that I have done on the tobacco issue with DOC.

Some of the other documents that I am

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relying on and that I pulled relate to some of the special projects that I am most familiar with, sponsored and/or supported by the tobacco industry.

Q. The documents that you gathered and that you produced subsequent to your deposition, are they all documents from the DOC archives?

A. Yes, they are.

Q. And were all these documents in the DOC archives at the time of your first deposition?

A. Yes, they were.

Q. So they haven't been added since or anything like that?

A. That's correct.

Q. Did anybody assist you in selecting these documents?

A. No. I did it on my own.

Q. So none of these documents were provided to you by plaintiffs' attorneys; is that correct?

A. That is correct, they were not.

Q. And now with these additional documents that you have supplied, do we now have all the documents that you intend to rely upon for your opinions in this case?

A. I believe so, yes.

Q. Now, what I am going to do, just so you

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understand the procedure, I have tried to choose at least some of these documents because, as you know, there was a pretty substantial volume, and I am going to simply put these documents in front of you and ask you what opinions they support. Do you understand that?

A. Uh-huh.

Q. What I am going to do, just to facilitate that process, is I am going to mark as our first exhibit your expert statement.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 1 for identification.)

Q. The purpose of Exhibit 1, your expert statement, Mr. Solberg, is simply for purposes of reference so that you can refer to it and tell us what opinion in the expert statement the particular document supports. Okay?

A. Uh-huh.

MR. McCONNELL: I would ask the court reporter to mark this as Exhibit 2.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 2 for identification.)

Q. Exhibit 2 is a document that is addressed to

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Mr. James P. Richards, President and Executive Director, The Tobacco Institute, Incorporated. Subject: Status of Magazine Articles.

My question is: What opinion does this document support?

A. First, let me say that it's going to be somewhat difficult to reconstruct the context for each document as it is placed before me. Secondly, I can help initially here at the beginning by saying that some of the areas that I focused on have been the coverage of certain topics by the news media on tobacco, and I have tried to look at coverage of antismoking activities or articles that would support that, which is the case here.

This is discussing various lay publications, Time, Reader's Digest, and some other magazines here, publications that have discussed more or less an antismoking story or position.

Q. Were you finished?

A. Yes.

Q. Is it fair to say that this document shows that The Tobacco Institute was attempting to keep track of articles that were in progress regarding smoking and health?

A. The Tobacco Institute monitors much like DOC

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monitors the tobacco industry. The Tobacco Institute has, as far as I know since its inception, has monitored any antismoking activity, whether it be an organization, whether it be a reporter who writes for a specific publication, and has kept very, I think, close track of the antismoking activities in the United States.

Q. Do you think that effort to keep track of ongoing articles regarding an industry is unique to the tobacco industry?

A. Restate your question.

Q. I can explain that. Do you think only the tobacco industry attempts to keep track of articles that are in progress that are critical of that industry? In other words, is it possible other industries also do the same thing?

MR. HOAG: I am going to object to form of the question. It calls for speculation on the part of the witness, unless he has personal knowledge.

A. I think the tobacco industry, specifically here we are discussing The Tobacco Institute, as a trade organization with pretty incredible resources, has the capability of tracking just about anything that happens on the tobacco issue. And as I stated

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earlier, that's what they have done, in addition to looking at the antismoking groups or organizations, and they have formulated several lists of different agencies that have worked in the antismoking field. This is another area that they have followed.

Q. My question is: Is it your expert opinion that the tobacco industry is unique in that regard in tracking the status of articles about that industry?

A. I have only focused my attention in terms of monitoring industry. Most of it has been focused on the tobacco industry.

Q. Is there any falsehood or deception anywhere in this particular document?

MR. HOAG: Object to form of the question.

A. I think it's important to note that True magazine, there is an article that's mentioned here. Actually, it's an article that hasn't even appeared yet. It's simply a reporter, freelance writer named Tyler, who is writing a piece for that magazine.

I think it's interesting, number one -- there's two points. Number one, I think it's very interesting that the tobacco industry knows ahead of time when articles are going to be written about

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them, especially when they are critical of the industry.

Number two is that True magazine has written some very interesting pieces that have focused on the, quote, "controversy," unquote, that the tobacco industry purported through the mass media for several years, and my understanding is that some of the articles that have been written by that magazine have been utilized by public relations groups hired by the tobacco industry, specifically Tiderock Corporation, and were sent out to not just other industry people but were sent to health professionals, including hundreds of thousands of physicians in the country, in order to further perpetuate the notion that there was a controversy about smoking and health.

Q. Do you know whether there was anything false in that article in True magazine, "Where There's Smoke There's Ire"?

A. I don't know. I believe that's a working title and I am not sure if that was the title that was written or not. I would have to take a look at that article in order to comment further on it. The article is not here.

Q. Is it true as you sit here today you can't

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comment on whether or not that article, whatever it's title ultimately was, that that article had anything false in it?

A. I don't know what article we are talking about here. There is no date provided here. There is no title other than a working title. Sorry.

Q. Don't be sorry. You can answer the question as much as you want. You said that you thought it was interesting that the tobacco industry knows ahead of time what articles are in progress, correct?

A. Correct.

Q. Do you know for a fact, as you sit here today, whether the tobacco industry is unique in being able to know what's in progress as opposed to, say, other industries?

A. Well, I think in terms of public relations and the number of press releases put out by the tobacco industry and the professionals who work in the PR firms hired by the industry, I don't think that it's a surprise to anyone working in the tobacco industry that several reporters who are freelance writers would be working on several stories at one time.

Q. My question is: Do you know whether other

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industries similarly are able to keep track of articles that are in progress that address the nature of that industry?

A. If a company or an industry publishes its own magazines and newsletters, I would certainly think that that would qualify as knowing what was going to be written in them.

Q. My question is: Do you know whether other industries are capable of learning what articles are in progress in other magazines, not magazines controlled by the industry, but other magazines that address the nature of that industry?

MR. HOAG: Object to form of the question. Overly broad and vague.

A. If you could give me a specific example of an industry that you are discussing, I might be able to answer the question.

Q. Do you know whether or not the beef industry is able to keep track of articles that are in progress in the press or magazines regarding the nature or the health consequences of eating beef?

MR. HOAG: I am going to object, just because you haven't put dates on this. Do you mean at any time?

MR. McCONNELL: Sure.

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MR. HOAG: Anytime in the history of the industry. Okay.

A. I think that companies of all kinds hire public relations firms, news clipping services and so forth, to track anything that's written about them or said about them.

Q. Or also anything in progress to the extent those public relations firm can track that information down, correct?

A. If a public relations firm has contact with a certain publication where they have sent a news release, I am sure that they could track whether or not something was being written based on the news release that they sent out.

MR. McCONNELL: I am going to ask the court reporter to mark Exhibit 3 for us.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 3 for identification.)

Q. Mr. Solberg, this is a Council for Tobacco Research document entitled Confidential Report, Scientific Advisory Board Meeting, New York, New York, March 7 through 8, 1964. My question is: For what purpose are you relying upon this particular document?

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A. Give me one moment just to review it again.

Q. Of course.

A. There are several reasons that I am relying on this document. The first is that you will see under the attendance of the meeting -- this is of the Scientific Advisory Board for the Council for Tobacco Research. Listed is Dr. Richard Bing and Dr. Paul Kotin. And at the time -- this is dated March 7 through 8, 1964. At that time, those two individuals had been selected to serve the American Medical Association Education and Research Foundation, AMA-ERF, Committee on Smoking and Health.

The industry has touted their support of the AMA-ERF as being a, quote "independent research project" end quote, and I think it's extremely suspect to suggest that it's independent when, number one, you have two members sharing committees, one for the tobacco industry, one for the American Medical Association ERF. Those would be the two individuals I just mentioned.

Secondly, I think it's even more suspect when Dr. Bing was elected to the Council for Tobacco Research at the Scientific Advisory Board.

In addition to that, those two individuals

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are listed as receiving grants, just for this meeting. I can tell you that that would be on page 3, under Item No. 8, Renewal Applications, which suggest that they have received other funding from the Council for Tobacco Research prior to this meeting: Paul Larson, $20,341, which was approved; Richard Bing, $11,599.48, which was approved.

So these are -- in addition to serving the AMA-ERF Committee on Smoking and Health and the Council for Tobacco Research, they are also receiving money from the Council for Tobacco Research to, I assume, conduct research, since that's what the Council for Tobacco Research does, or did at that time.

In addition to that, there are other members of those committees, but of those two committees that I mentioned, the AMA-ERF Committee and the CTR Advisory -- Scientific Advisory Board -- but I think these two people are perhaps the most important.

In addition to receiving Council for Tobacco Research money, Paul Larson also worked under contract at the University of Virginia, which is where his teaching institution was with American Tobacco Company. They had paid him directly for specific research.

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Q. Are there other reasons why you are relying upon this document?

A. No. I take that back. Other than the fact that some of those in attendance at the Scientific Advisory Board meeting for the Council for Tobacco Research are attorneys, and I think that's interesting that attorneys would go through a peer review process of grant applications when deciding what research needed to be done.

Q. Where is that? Where is the reference to attorneys attending?

A. Mr. Hoyt is an attorney, Mr. W.T. Hoyt.

Q. He was the executive director of CTR, correct?

A. That's correct.

Q. Is there any other reason why you are relying upon this document?

A. No. I will make a general statement about that document and others like it.

Q. When you say "that document," do you mean Exhibit 3?

A. Yes, sorry. That Exhibit 3 is one of many examples that I provided dealing with the Council for Tobacco Research and its various connections to other organizations like the AMA-ERF. I mentioned

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there were other people who served on the AMA-ERF Committee on Smoking and Health and I have spoken with some of the people who either were involved with the AMA as a staff member at that time or who objected to some of the things that were happening with that committee and were members of the AMA at that time, and they have expressed their opinions to me about the relationship that the AMA-ERF Committee on Smoking and Health had with the tobacco industry.

Q. Who have you spoken with?

A. I have spoken with Dr. Roy Ritts, who was a staff member at the AMA in the 1960s and 1970s during the time that the AMA-ERF Committee on Smoking and Health was formed. He was actually offered the job to run the program that received the money from the tobacco industry, which he refused to do. He had previously worked on research. He was a researcher for the AMA. They had a small research budget and he had worked under that budget at one time but refused to work on the tobacco industry project.

The other people I have spoken to would be Dr. Jesse Steinfeld, former Surgeon General, who has expressed his displeasure, not only to me now, but at the time that it occurred, the relationship that

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the AMA-ERF had with the industry.

Dr. Stanhope Bayne-Jones, I'm not sure how to spell all that, who was on the first Surgeon General's committee in 1964 and actually was asked to attend a meeting, joint meeting, I believe it was in 1968, where the tobacco industry representatives met with the AMA-ERF Committee for Tobacco and Health and the executives of the AMA, and at that meeting expressed his displeasure with the American Medical Association, and specifically with the way that press reports had been misinterpreting some of what was being discussed at these meetings.

There were a number of meetings where the AMA-ERF program met with members of the tobacco industry. When I say "members of the tobacco industry," it includes the executives of the companies who were supporting the project at that time, it includes the chief counsel of those companies who were supporting, for example, Addison Yeaman, Henry Ramm. There's a list of them. I don't have them all here with me. It also includes the research directors at those companies, people like Helmut Wakeham and James Mold and James Mold's superior. I don't recall his name at the moment.

So I just wanted to be clear that when I say

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the meetings of the AMA-ERF and the industry, that I try to make clear some of the people in the industry that were at these meetings.

Q. Did any of these people that you spoke with express---

A. I wasn't done yet, actually.

Q. I'm sorry. By all means, continue then.

A. That's okay. Sorry. There's just a few other people that I have spoken to. Dr. Walter Burdette, who was also on the Surgeon General's committee in 1964, expressed his displeasure with the American Medical Association ERF and the tobacco industry at that time, and has since also mentioned that to me.

Dr. Leonard Schuman, who was also on the Surgeon General's committee in 1964 and was also at one of the meetings, the earlier meeting I mentioned in 1968, where the AMA-ERF met with various tobacco industry representatives, it was he and Dr. Stanhope Bayne-Jones who at that meeting criticized the way that the industry had used some of the statements made by the AMA regarding smoking and health. They felt that they had been misused, that those statements had been misused.

Q. Misused in what way?

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A. In public relations efforts.

Q. What were the statements that were misused?

A. I would have to see some of the documents that I'm relying on. I don't have those with me, but if you have those later, we can talk about that. I will---

Q. There's always a chance.

A. One of them was -- the primary statement that they objected to was that the smoking and health issue had yet to be resolved, that there was no cause and effect relationship between smoking and disease, and those individuals who had protested those statements, who had criticized the industry for misusing those statements, did so because they knew that in 1964 when they served on the Surgeon General's committee, that those issues had already been dealt with and that more than 7,000 research articles had already been looked at in providing that, in preparing that first report.

Q. Anything else with respect to Exhibit 3?

A. No.

MR. McCONNELL: All right. I am going to ask that the court reporter mark Exhibit 4.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 4 for

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Identification.)

Q. Mr. Solberg, this is entitled Public Relations Proposals for The Tobacco Institute, Inc., and I would ask you to look at it and tell me for what purpose you are relying on this document.

A. This is a document that discusses The Tobacco Institute's public relations activities, putting a positive spin on the industry through pamphlets. They call them leaflets here, many of which I have copies of. I know they made a video and I am not sure if this is the video actually discussed here. It says television and civic group film, fact sheets about the industry.

Essentially this is relying on this -- I am relying on this document so that I better understand The Tobacco Institute's public relations strategies and how they operated.

Q. Do you interpret anything in this document to indicate an effort by the tobacco industry to mislead the public?

A. The Tobacco Institute by definition misleads the public. Their job was to confuse people with the way that they did their business.

Put it this way: If their job, which is here, and their objective is to put a positive spin

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on the industry and put a positive spin on the smoking and health issue through the various publications and other strategies that they have used, it seems to me that they are trying to influence public opinion about not only their industry and their products, but the whole so-called controversy that they drummed up about the smoking and health issue.

Q. Is there anything in this document that you think manifests an intent to mislead?

MR. HOAG: Object to form of the question.

A. This document---

MR. HOAG: Let me finish. Then you can answer.

Object to form of the question. Vague and overbroad.

Go ahead.

A. This document is not what is sent out to the public. This document, although it's available on the Internet now, I'm sure, this document simply talks about what they will send out to the public.

The public is not reading this document. They are going to be reading a pamphlet about the so-called controversy on smoking and health, which

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cites the research that the industry -- the industry money that they gave for the AMA-ERF, for example.

Q. As you say, it's an internal document. My question is, in this internal document, is there anything that you see in this document that you interpret to indicate an intent by The Tobacco Institute to mislead the public?

A. I would like to know what they mean by developing science contracts, maintaining two-way communication with science writers, scientific and medical journals and scientific and medical organizations.

Q. What page are you at, Mr. Solberg?

A. I'm on page 4.

Q. Where on page 4?

A. Letter G, under Science Contracts.

Q. Science Contacts?

A. Contacts.

Q. Maintaining two-way communication with science writers, scientific and medical journals, and scientific and medical organizations, right?

A. That's correct.

Q. In your expert opinion, is there anything in that statement that you think indicates the tobacco industry's efforts to mislead the public?

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A. Yes, most certainly. If you look at the specific examples of where they have utilized the context with medical journals -- and let me give you an example. At the Journal of the American Medical Association in 1968, they published an editorial that talked about the smoking and health issue. They don't call it a controversy in the title of the journal article, but the galley proofs of that editorial -- and, remember, this is an editorial, so this is speaking for the American Medical Association, at least its readership at that time, and for the journal and the journal editor at that time or the editorial board of the journal.

The industry was provided galley proofs that went to Bill Kloepfer at The Tobacco Institute, so it would be one specific example where they were able to comment on a publication in a peer-reviewed scientific journal prior to its release.

Similarly, the same person at the AMA, his name was Ira Singer, has received copies of, I guess you would call them galley proofs or drafts from the industry, to comment about articles that the industry was preparing, specifically a document that The Tobacco Institute put out called The Cigarette Controversy, which cited the American Medical

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Association and the project that the industry funded through the ERF at the AMA.

Q. In addition to point II-G that you have just discussed, is there any other part of this document that you think supports your expert opinion regarding the tobacco industry's efforts to mislead the public?

MR. HOAG: Let me just say you can take any time that you need to review the document to answer the question.

Q. That's certainly true. Take as much time as you want, Mr. Solberg.

A. If you look at page 4 still, number III-B, State and Local Activities: "Public relations counsel will provide necessary material and presentations to, quote, 'offset attacks at state and local levels.'" Unquote.

Offsetting attacks I interpret to mean as any kind of local or state legislation ordinance that would be what the industry feels is an attack on them. So that means that if a state wants to pass a law that requires or that prohibits cigarette vending machines, they would consider that an attack. And, in fact, they have -- over the years they have fought those kinds of ordinances, those

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kinds of state laws across the country.

I think on page 6, number -- Item No. VI, Public Relations Advisory Committee, which was proposed to bring together representatives of the member companies' public relations departments, I think it goes beyond setting up a trade association when you start bringing in the staff members from the various companies to actually assist that trade association in some of the work that they are doing, especially some of the work that I just provided examples of.

Q. Anything else that supports your opinion, efforts to mislead the public?

A. State your question again.

Q. Is there anything else in this document besides what you have already discussed that supports your expert opinion regarding the tobacco industry's efforts to mislead the public?

A. Not in that document, no.

Q. You mentioned Mr. Bill Kloopfer.

A. Yes.

Q. One of the documents that was included in the boxes that we got was the deposition of Bill Kloopfer. I haven't brought that over. I thought it would be a bit bulky. But let me ask you, at

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this time, for what purpose are you relying on the deposition of Bill Kloepfer?

A. His deposition, to my understanding, was taken in the Cipollone case and has been widely available since then. I actually have had it in our archives since 1987.

Essentially, Marc Edell, who I believe is doing the direct examination of Mr. Kloepfer, asks him many of the questions that you were -- that I just provided examples of in terms of the relationship that the tobacco industry, The Tobacco Institute and CTR had with the AMA-ERF.

Q. There were some other depositions in the boxes, too. Let me ask you about those. There's the deposition of Charles G. Thompson and that was also in the Cipollone case?

A. Correct.

Q. For what purpose are you relying upon Mr. Thompson's deposition?

A. Actually, I didn't know I copied that one. That may have been sent -- I don't think -- I'm not relying on his deposition.

Q. There was also a deposition of Ernest B. Howard --

A. Yes.

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Q. -- in the Cipollone case. Are you relying on that?

A. Most definitely.

Q. In what regard?

A. Dr. Howard was the executive director of the AMA. He came right after Dr. F.J.L. Blasingame. Don't ask me what those initials stand for. When the tobacco industry and AMA-ERF signed their contract in 1964, literally about one month after the Surgeon General's report was released, Blasingame was in charge at that time at the AMA and then Dr. Howard came after him.

The reason I'm relying on that deposition of Dr. Howard is because of the direct contact that Dr. Howard had with the tobacco industry throughout the entire time that the AMA-ERF was funded by the industry, first as assistant executive director and then as executive director of the AMA. He served very much as a liaison. He actually hosted meetings for the industry in Chicago at the AMA headquarters.

Q. Is it your opinion that in serving as liaison that Dr. Howard somehow facilitated the tobacco industries' efforts to mislead the public?

A. The nature of the project of the AMA-ERF that was funded by the industry, the entire nature

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of that project was to mislead the public. If you look at the stated objectives when they signed the contract, the AMA said -- I can't quote this specifically or exactly, but it was to remove the harmful components in tobacco smoke.

Now, I take that to mean that the AMA-ERF projects that are funded are going to find a safer cigarette. That in and of itself, and the publicity surrounding that -- and I provided many examples of newspaper articles, magazine articles, medical journal articles, that covered the relationship that the AMA had with the industry and what the objectives of the AMA-ERF were at that time.

I think the very nature of that project misled the public into believing that such a cigarette could be found. I think it provided -- according to Dr. Roy Ritts, it provided a very vexing problem for both the AMA-ERF and the tobacco industry because it is -- one would assume they knew that the cigarettes at that time were not safe.

So if you ask Dr. James Mold about that project, he will tell you flat out that none of the objectives were even pursued in the grants that were handed out. And he reviewed -- at one of the meetings in 1968, Dr. Mold was asked to take a look

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at that project, and, as well as Helmut Wakeham and some of the other research directors, said they were way off base.

The AMA-ERF was doing a number of things. Number one, a number of those who were serving the AMA-ERF Committee were padding their own budgets at their own universities or own research institutions. And that's been documented, because we just talked about some of the grants that were handed out, Paul Larson, Richard Bing. Maurice Seevers was padding his own budget back at the University of Michigan.

Secondly, the very fact that they promoted it as a, quote, "independent research project," even though the money was coming from the tobacco industry, was a lie. It was misleading because you had people sitting on the AMA-ERF Committee sitting on the CTR advisory -- Scientific Advisory Committee and taking money directly from tobacco companies to do research. And that, by definition, cannot be independent from the industry.

Q. Did you just state that you have an opinion that there is no such thing as a safer cigarette?

MR. HOAG: Object to the form of the question.

Q. I mean, among other things. You said a lot

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of things, but do you have an expert opinion to talk about a safer cigarette is itself a lie?

A. Do you want to define "safer" cigarette for me?

Q. Safer than current cigarettes.

A. I stated in my last deposition that the efforts to try to produce a safer cigarette were futile.

MR. HOAG: Wait a minute.

A. The reason for that, and I will explain my answer, what they tried to do was remove the tar, basically, through filtered cigarettes, low tar cigarettes. They tried to remove some of the carcinogens in the smoke. And what they didn't understand was that people were going to compensate for that being removed from the product by smoking more cigarettes, inhaling more deeply, holding it in longer, which in effect may be more dangerous to one's health than if they had just left the product alone by itself.

I think if someone were to ask me what the safest cigarette is on the market -- which is an oxymoron. It doesn't exist. There is no such thing as a safe cigarette. Safe is a word that is used in advertising, in public relations schemes, to get

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people to think that what they are doing is not as bad as it could be. But to use the, you know, the term "safe" cigarette, it would be something like a Camel or Pall Mall, no filter. The only reason I say that is because people smoke fewer of them. They cannot inhale it very deeply because it's very strong. And we know from all the Surgeon General's reports, and even the Royal College of Physicians' report in 1962, that disease associated with smoking has a dose-response relationship, and that's what the 1981 Surgeon General's report said, The Changing Cigarette. They said that you can't manufacture a product that they knew about in the literature.

Now, there may be different literature within the tobacco industry that I would love to see, but what they knew about that was public record that they could use in the 1981 Surgeon General's report was that low tar filtered cigarettes are not safer, despite the fact that Leo Burnett was doing focus groups at that very time, learning that people thought it was safer, and they were using terms like, "Oh, yeah, I smoke Merit Light or Merit Ultra-Light," or whatever it is, "because it's safer."

Q. Didn't the 1981 Surgeon General's report say

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that low tar cigarettes are not safe but they are safer than higher tar cigarettes?

MR. HOAG: Can we stop for one second? I am assuming you were done. Were you finished with your last answer, before we get to the next question?

THE WITNESS: Yes.

MR. HOAG: I'm sorry. I wasn't sure.

Do you remember the question?

A. Ask the question again.

Q. You made reference to the 1981 Surgeon General report. My question was: Did the 1981 Surgeon General report say that a low tar cigarette is not safe but is safer than a higher tar cigarette?

A. It did not say that. In fact, it said -- they go into a whole -- in great detail about compensatory smoking and how it is not safer than what's on the market. It talks about -- that's why I don't like the term "safer." I don't know who originated it, I don't know where it came from, but that in and of itself is very misleading. And to suggest that a low tar cigarette that has less carcinogens in it may not produce as much lung cancer but doubles your risk of emphysema and heart

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disease is ridiculous. That's not safer. If they take the tars from a low tar cigarette and paint it on mice skin and they show, aha, look, there's 89 percent less tumor rate on the skin of mice from a low tar cigarette versus a regular cigarette, that's crazy. It's crazy because you are not taking into account the variety of diseases, and not to mention the compensatory smoking. I mean, mouse skin painting has nothing to do with compensatory smoking.

Q. You mentioned James Mold. Didn't he think that he developed a safer cigarette?

A. I think he thought he was on the track to doing so. My question to James Mold, if he was sitting here today, would be: If you thought you had a safer cigarette, Buddy, why didn't you produce the research? Why didn't you save the world? Because you and I wouldn't be sitting here right now talking about this.

So I don't think that he did. I think that he was on the right track to doing something that may have produced, I will use his term, a less -- I am trying to think of the word -- biologically active product.

Q. There was another deposition that I saw in

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your new reliance materials. It was the deposition of Charles Macenski.

A. Yes.

Q. My question is, for what purpose are you relying upon that deposition?

A. He was also at the American Medical Association. He was involved in research of a specific cigarette filter in the 19 -- I want to say 1950s. Or I shouldn't say a specific. I should say of cigarette filters. And I thought it was interesting to learn how the AMA had previously worked with the tobacco industry. I mean, technically, if you want the true history of this, even before Charles Macenski, "Machenski" -- I'm not sure how to say his name.

Q. Neither am I.

A. I could probably spell it. M-a-c-e-n-s-k-i.

Q. There's the way I have got it spelled, too.

A. If you go back and you take a look at -- and I believe I provided examples of these as well. If I didn't, I will certainly do so.

Q. Oh, good.

A. Cigarette advertisements in medical journals back in the 1920s, '30s, '40s. So if you look at JAMA, it was filled literally week in and week out,

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not filled, but several cigarette ads per journal, much like you would see Time magazine about ten years ago. And so the relationship wasn't necessarily new. In fact, the editor of JAMA at that time in the 1930s, '40s, was a fellow by the name of Dr. Morris Fishbein, who later ended up going to work for one of the tobacco companies. I believe it was Liggett. I don't remember if that's for sure or not.

So, you know, technically, if you were, if you were to talk about that relationship, it wasn't necessarily a new relationship. It had been going on for some time. Charles Macenski is simply another provider of information about what kind of relationship they had. Specifically, research would be his area.

Q. Do you have an opinion as to whether or not the relationship between the AMA and the tobacco industry compromised the quality of the research that the AMA-ERF either undertook or supported?

MR. HOAG: I'm sorry. Could you repeat the question?

MR. McCONNELL: I'm really not sure I can.

(Thereupon, the question referred to

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was read by the reporter as above-recorded.)

A. Did the tobacco industry or the AMA do anything to compromise the research projects that the AMA-ERF was funding? That's the question?

Q. That's actually a much better formulation of the question.

A. I should move over there.

Q. Please.

A. Do I know of evidence to that effect?

Q. Right.

A. You know, I would have to look at all 795 grants that they handed out in order to answer that question. I can tell you that the focus of the project was misleading. You can ask any member of the AMA at that time, or any of the delegates, that it was certainly misleading.

The research that was actually being done did not focus on the objectives that they stated at the beginning of that project. And that's where Helmut Wakeham and James Mold have stated that it was -- at least 50 percent of the AMA-ERF grants were a waste of time. It was research that had already been done. It wasn't doing anything new. They focused I think close to 50 percent of their grants on the study of nicotine, and they were

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saying that none of it was new and they weren't following the objectives stated originally, which was to remove the harmful substances in tobacco smoke.

Q. As you sit here today, you haven't personally reviewed those research grants, correct?

A. I have read almost every abstract. Some of those are not published. Some of those are simply papers not -- it was not peer-reviewed. It was a paper presented at a conference, so I have no way of knowing. I can only comment on the 795 abstracts included in the final report of the AMA-ERF called Tobacco and Health.

Q. You mentioned the grants that---

MR. HOAG: Were you finished?

THE WITNESS: Yes.

Q. You mentioned the grants that were awarded to Dr. Larson and Dr. Bing, correct?

A. Correct.

Q. Do you have any criticism of the research that those particular doctors undertook?

A. Sure.

Q. Okay.

A. It was not independent of the tobacco industry.

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Q. What was the research that they undertook?

A. I would have to review the Tobacco and Health Report, because they worked on several different projects --

Q. Do you know if---

A. -- many areas. Some of it focused on basic cellular research and, I mean, some of it you would swear to God by reading the abstract it had nothing to do with the tobacco issue.

Q. Do you know if either Bing or Larson relied upon invalid data or used improper methodologies?

A. I would have no way of knowing that.

MR. McCONNELL: I am going to ask that the court reporter mark Exhibit 5 for us.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 5 for identification.)

Q. Mr. Solberg, this is a document that says at the top left, The Tobacco Institute, Inc., Public Relations Meeting, August 28, 1963. My question is: For what purpose are you relying upon this document?

A. Let me review it for one moment.

Q. Please.

A. Can I take notes on these things so I can remember?

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Q. It's completely up to you and your attorney.

A. When you have a five-page or six-page---

MR. HOAG: The only thing I am going to tell you on notes is, to the extent you are taking notes now and you are using them for purposes of your testimony, if he requests those notes, then he would be able to have a copy of the notes. But if they will assist you and you need to take notes for the purpose of answering the questions, feel free to do that.

A. Let me start by saying one of the things I've tried to do over the last ten or so years is, in looking at this issue and documents, either public or industry documents that I have had in my possession, is comparing the response to the Royal College of Physicians' report that was put out in 1962 and comparing that to the release of the Surgeon General's report in '64 here in the United States, primarily because the Royal College of Physicians' report, in my opinion, had much wider spread publicity in terms of the amount of time that was covered, and so that's one of the areas that I have looked at.

Secondly, Senator Maurine Neuberger is mentioned in this document as a person who is

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expected to or has introduced already antismoking legislation. She is of significant importance, not only because of her so-called antismoking activities, but because she had asked the American Medical Association in 1962 to get involved on the cigarette issue and the AMA responded to her by saying that the AMA Council on Drugs had reviewed this and they were not going to be involved at this time, primarily because the Surgeon General's report was being prepared and they didn't want to duplicate an effort.

So in many ways it gets back to some of the other documents, some of the other things I have already said about the AMA-ERF, that it didn't make sense where the AMA was invited to get involved in the tobacco issue prior to the Surgeon General's report, stating that they didn't do so because they didn't want to duplicate an effort and they were leaving it up to the Surgeon General's committee, and then, literally a month after the report comes out, to engage in this project with the tobacco industry.

My understanding is that that relationship, the AMA-ERF being funded by the industry, goes back to at least 1959, where they had begun, the industry

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had begun looking at a way to work with the American Medical Association.

I think equally important is the fact that The Tobacco Institute here, I guess this is -- The Tobacco Institute felt that the most dramatic way to get the industry's opinion across to the public was through advertising, and I think that that's very important in terms of what the industry's positions were and how they communicated that to the public.

I think it's interesting they were worried about any response that The Tobacco Institute or the tobacco industry would put out refuting the Royal College of Physicians' report from 1962. They were actually worried about members of the Surgeon General's committee that was, had already been convened at that time, what kind of reaction that would get from those kind of people. So they felt perhaps that it would backfire, if they attacked one scientific group, whether or not they would have some backlash from another scientific group that was putting together an independent report from the other report.

Really, this entire document is discussing how they can rebut the Royal College of Physicians' report and, again, this goes to what I said about

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The Tobacco Institute by definition being misleading. This is the way that the tobacco industry, and specifically The Tobacco Institute, has responded to scientific reports. They don't like it because it's going to at some point affect their business, and so, rather than through science refuting the Royal College of Physicians' report, or the Surgeon General's report for that matter, they engage in public relations activities in order to get a very specific message to the public that is antithetical to the report that's just been released.

Q. Well, in your expert opinion, is there anything in this document that reflects an intent to mislead?

A. Certainly. The word "rebut" is used. They are trying to rebut the Royal College of Physicians' report. I mean, it's -- how is that not misleading? If you have a scientific group preparing a report that has been worked on for several years, and because your industry feels attacked you think that it's wrong and you tell the public that it's wrong, that's very misleading to the public.

Q. So, in your opinion, any effort to rebut the Royal College of Physicians' report is necessarily

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misleading?

A. Not if it's done through science and peer review journals and scientific committees.

Q. Well, if you look at page 7, at the bottom, Mr. Solberg, it says, "It does not attempt to tell the whole story, because" -- now turning to the next page, "because the whole story would take piles of documents. This message does suggest that there is a great deal of validity to our position."

Doesn't that sentence indicate to you that at least the people who wrote this document believe there was validity to their position? You may disagree with them, but doesn't this show they thought there was validity to their position?

A. The people at the Tobacco Institute.

Q. Right.

A. If they didn't think there was validity in their position, I can't imagine that someone would work there. They are being paid -- unless you want to suggest they are simply doing it for the money.

Q. That's what I am asking you. You may think they are wrong, but my question is: Does this document permit you, in your opinion, to question their sincerity?

A. First of all, I didn't say they were wrong.

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I did not say they were wrong in preparing this document or strategizing about how to communicate with the public and what messages they want to communicate with the public. I have never said that that's wrong.

What I have -- you asked me if it was misleading. And you have to put this in the context of the Royal College of Physicians' report being released in '62 and getting a lot of attention here in the United States, even until 1963, when this document is written. This is probably written at the time they republished that document for the United States. They made another version of the document and I'm guessing this is about the same time.

So to put this back into the context of what is going on -- and you asked me the question about did I feel that these strategies would be misleading. Yes, they would be misleading to the public.

Q. I guess my question is whether you have an expert opinion that there was an intent to mislead, an intent to convey a falsehood.

MR. HOAG: I am going to object to the question because it's been asked and answered.

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MR. McCONNELL: Well, if it has, I apologize.

MR. HOAG: He gave a very firm yes about six, seven questions back.

Q. You may answer.

A. I think I did answer the question.

Q. Well, let me just flesh it out. My question is: Does this document indicate to you that the people at The Tobacco Institute that engaged in this public relations meeting of August 1963 were intentionally attempting to foist falsehoods upon the American public?

A. Let me say that they intended to lead the public into listening and hopefully getting the message that they are trying to promote, whether it be through advertising or other strategies.

Q. Do you see any evidence in this document that the people at The Tobacco Institute were attempting to lead the public opinion, as you say, via statements by The Tobacco Institute that were false and that The Tobacco Institute knew were false?

MR. HOAG: Object to form of the question. It's compound, it's overbroad, it's vague.

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A. You are asking me whether or not the tobacco -- those who worked at The Tobacco Institute feel that what they are doing is telling the American public something false?

Q. Right.

A. What they are doing is telling the American public, don't believe science, believe us. That's what they are doing. They are calling the science false and, therefore, yes, what they are doing is saying something to the public that says the science is faulty, don't believe the science. And they are knowingly doing that.

Q. Do you have an opinion as to whether or not when they say the science is false, they don't really believe that, that they are intentionally saying something that they think is false?

MR. HOAG: Object to the form of the question.

A. You know, I wouldn't know what the staff members at the institute believed. I mean, I don't think there is any way I could know that.

MR. McCONNELL: I am going to ask the court reporter to mark Exhibit 6 for us.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 6 for

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identification.)

Q. Mr. Solberg, this is a document that begins, "In 1959, H&K divided its activities into two categories." And then it continues. My question is: For what purpose are you relying upon this document?

A. Initially -- I will give you the general answer and then become more specific. H&K is Hill & Knowlton. And one of the areas that I have focused on during the past ten years has been the public relations firms hired by the industry. There's various firms hired by the industry.

This is great. Under Broadcast and Media on page 2, "Hill & Knowlton found that the American Cancer Society was preparing a film series on cancer for NBC. One session would be on tobacco and lung cancer."

After Hill & Knowlton contacted NBC, the network agreed that there was no conclusive evidence and the film was revised and it was not an antismoking or anti-tobacco stance.

That's pretty significant, I think, in terms of manipulating the media to withhold information from the public.

Q. Do you have any evidence that NBC was in any

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way misled by Hill & Knowlton?

A. I have no idea. I have no idea. I don't know what strategies they used. I don't know what words they used to discuss this, because it doesn't detail that in this report here. But I think it's very important to document the way that the industry is able to manipulate the media, the way that the industry is able to not only convey the messages they want, but to withhold messages that they don't want.

Q. Is what Hill & Knowlton did in that example you cited, and for that matter in the other examples that are cited in this document---

A. It's borderline censorship is what it is.

Q. It was NBC that made the decision, right? Hill & Knowlton didn't engage in censorship, did they?

A. Let's look at the year in which this was written because this was written prior to cigarette advertising coming off the air. So if you have got cigarette advertising on NBC, you don't think that a little bit of pressure from somebody within the tobacco industry to say, "Hey, you know, this hasn't been proven yet, I don't know what you're doing here, but that's not a good story and, by the way,

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I'm employed by, you know, Philip Morris, R.J. Reynolds," so on and so forth, you don't think -- I mean that happens today. We know that that happens today. That happens -- it's happened in the print media. That's what insert orders are all about.

Whatever industry it is, I'm not just saying the tobacco industry, but many industries and companies do that today. The problem is that they are saying, you know, don't put my ad next to, you know, for Mercedes, next to an ad for a Lexus. The problem with the tobacco industry back in the 1960s, '70s, '80s and '90s is saying, "Don't put my ad in if there is a 12-page spread on how terrible the tobacco industry is."

Q. Do you have any evidence that NBC revised the film because they were afraid of losing tobacco advertising, as opposed to revising the film because they were persuaded that it needed to be revised?

A. I think that anyone who knows the way our free market system works, the way that advertising works, the ways that companies lobby, not just, I mean, not for laws, but this is an example of lobbying to get your way with a broadcast company, that the perceived fear -- I'm not saying that they have threatened them that they wouldn't, you know,

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that cigarette companies would stop advertising on NBC. I am saying it's a perceived fear that, you know, Pick-A-Media Corporation has that they may lose advertising revenue.

Q. You are saying anybody knows that. My question is: Do you have evidence to substantiate your opinion in this particular case that NBC made its decision based on fear of lost advertising revenues as opposed to anything else?

A. Not in this example, no, but I have other examples of NBC killing stories that were -- this is not revising the story, this is literally killing the story, because of the perceived fear and the discussions that they had. At that time -- if you want me to give you the specific example, I can do that.

Q. Go ahead.

A. In 1992, Betty Rollins came down to do a fluff piece on DOC at her urging. We didn't call her and say, "Come and do a story about DOC and how we, you know, our strategies about counteracting the tobacco industry." She called us. She came down. She said, "This is going to be the longest story I have ever done on, whatever, the NBC Today Show. And we waited and we waited and we called and we

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called and she said, she finally said, "Well, the story's been killed."

And we said, "Well, why has the story been killed?"

She wouldn't answer that question. But her producer said to me that "I think it has absolutely everything to do with who advertises on TV." Philip Morris is No. 2, 3, 4, depending on what year you want to look at. They are the -- one of the number one advertisers, top five almost every year on television. Her producer told me that.

Q. Well, obviously for the non-tobacco products.

A. Well, obviously, yes.

Q. Is there any other reason why you are relying upon this document, Mr. Solberg?

A. The fact that Hill & Knowlton, The Tobacco Institute, some of the other PR firms, spend a lot of time, in my opinion, knowing what the antismoking movement is doing, sometimes before the antismoking movement even does it. I think it's just very interesting to know that they are -- that they were that closely monitored and that the industry was able to literally refute a report before the final publishing was even done.

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Q. Hill & Knowlton was a public relations firm, correct?

A. Correct.

Q. One of the biggest in the country, true?

A. That's true.

Q. And also a very reputable public relations firm; would you agree with that?

A. I would question many of their tactics.

Q. You don't have to agree with me.

A. I don't agree with that.

Q. The types of things that Hill & Knowlton did that are listed in this document, is this any different from what any public relations firm would do for a large corporate client?

A. Sure.

Q. In what way?

A. You are dealing with a product that is killing people, and they are trying very, very hard to understand how they can possibly put a new spin on people dying from a product.

Q. Well, aside from---

MR. HOAG: Were you through with that answer or---

THE WITNESS: Yes, I'm through with that answer.

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Q. Aside from the nature of the product, my question is, the techniques that Hill & Knowlton employed, the monitoring of what was going on in the media, et cetera, and trying to have input on what the media did, that's all clearly reflected in here, true?

A. True.

Q. Are those techniques in any way unique or did other public relations firms working for other industries use the same techniques?

A. That's a very good question, and again I am going to go back to the size of the industry we are dealing with, the resources they have, the power and control that they had over the media, and still have to this very day, and that because of their advertising dollars that are pumped into this, makes them, I think, extremely -- makes them very different from many industries.

Could Hill & Knowlton, if they represented DOC, use these same strategies? No, they could not. No, they could not.

Q. Because DOC doesn't have as much money is what you are saying, right?

A. I am saying we don't have political clout. We don't have an advertising budget. We don't -- I

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mean, that's a poor example. I mean, you could pick, you know, a midsized company and they still probably would not be able to use many of the same strategies.

MR. McCONNELL: I am going to ask the court reporter to mark Exhibit 7 for us.

By the way, if you want to take a break at any time, Mr. Solberg---

MR. HOAG: Before we get to Exhibit 7, do you not want to ask if he has anything else on this Exhibit 6 or was that---

MR. McCONNELL: I thought I had asked that.

Q. If there is anything else on Exhibit 6, please tell me.

A. No.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 7 for Identification.)

Q. Mr. Solberg, Exhibit 7 is Philip Morris interoffice correspondence with Hugh Cullman to J. F. Cullman, dated October 18, 1961, and attaches notes of today's T.I.R.C. meeting.

Now, I will tell you, Mr. Solberg, these copies are as good as I could get them. If for no

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other reason, I am putting this document in front of you so you can tell me why you are relying on it and maybe interpret these notes.

A. This doesn't say Doyle and Dane? It couldn't possibly, could it? On page 1, 2, 3 -- 4, at the top third of the page there is a -- on the side of the parentheses there.

Q. It looks like Doyle, but I can't read the second word.

A. All right. There's really only a few things that I can see in here. Number one, I'm still amazed that lawyers can run scientific, supposedly scientific, organizations. Henry Ramm and Hoyt are mentioned here, commenting on the funds that are being given out. Again, Paul Kotin, we have already mentioned him, who served on the Scientific Advisory Board, is mentioned again, and I have already made his connection to the AMA-ERF.

I think that's really it.

Q. You said that the lawyers are running things. There's certainly evidence here that lawyers were present and maybe they had input, but what evidence do you see in this document that lawyers were actually running the Scientific Advisory Board?

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MR. HOAG: I am going to object to the form of the question.

Go ahead.

A. Hoyt at one point was the executive director, if I am not mistaken, of CTR, so that's pretty close to running the shop, as far as I can see. The fact that they continued to be involved after, you know -- you know, the question is, why was Henry Ramm from R.J. Reynolds Tobacco Company sitting in on scientific peer review processes? Why is a lawyer -- I didn't know that peer review had to go through attorneys. My feeling was that you do the science, you submit the grant proposal. If it's funded, you do the science, publish the paper, or present it at a meeting. The peer review process, you know, from a scientific standpoint, does not involve lawyers, unless you are talking about submitting to a journal, you know, a law review journal in that area of academics.

Q. Do you see any evidence in this document of lawyers having any control over scientific decisions?

A. They decide where the funding goes. If they are talking about where the funding goes, then, yes, they are making decisions about scientific research.

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Q. Where do you see the evidence of that in this document?

A. Page 2, down toward the bottom. "Ramm asked, do you need any additional funds." I don't know who he's asking here, but this is one of many examples that you could be pulling out of the bag here dealing with CTR meetings where lawyers are present.

Q. Are there any other examples in this document?

A. Not that I can make out. It's hard to read some of it.

Q. Do you know of any example where a scientific decision by Clarence Cook Little was overridden by an attorney?

MR. HOAG: I am going to object to the form of the question. It's broad and vague.

A. What I am saying is the decision-making process wasn't just Dr. Little making his one-person decision. It was a panel of people that involved lawyers, so the -- yes. I mean, the very process suggests that lawyers influenced Dr. Little's decisions that he made on a daily basis at CTR.

Q. Do you know of any example where at CTR Clarence Cook Little wanted to do some scientific

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research or support any particular grant or did not want to support a particular grant and his decision was overturned by a lawyer?

A. He didn't want to support the AMA-ERF. He didn't want the industry to. Now, CTR didn't fund that.

Q. Are there any other examples?

A. That's the primary one that comes to mind.

Q. Aside from primary examples, are there any other examples?

A. Not that I can think of at the moment, no.

(Thereupon, a document was marked as Defendant's Exhibit No. 8 for Identification.)

Q. Mr. Solberg, this document is entitled The Impact On Public Attitudes of the Surgeon General's report, prepared for Hill & Knowlton by Opinion Research Corporation, January of 1964.

A. Yes.

Q. The question is: For what purposes are you relying upon this document?

A. Generally, as I stated earlier, one of the things that I have tried to look at is the response of the industry to the release of both the Royal College of Physicians' report and the Surgeon General's report in 1964. This is another example

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of how the industry tried to monitor what the public's perception was.

I think that this report, the opinions expressed by the public that are published in this report, are completely the opposite of what the industry says today in their own defense in these cases, that they, the industry loves to talk about the widespread attention that the Surgeon General's report got and how everybody knew that smoking was a major cause of this disease or that disease, that everybody knew about the report.

What it fails to -- what the industry has failed to do, though, is to understand that awareness of something does not mean knowledge of it. And I think this is a great example that 78 percent of the people knew of a report on smoking and health, but most of them couldn't even identify who put it out. I think it's a perfect example of the misinformation that the industry is doing in its own defense now.

Interestingly enough, on page 8, a question that was asked was, "What do you think the government should do about the possible connection between smoking and health?" Most people said "Nothing," they should do nothing.

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Q. Is that true, that most people said "Nothing"? It's 29 percent, isn't that right, or 28 percent?

A. 28 percent after the report said "Nothing." 29 percent before the report said "Nothing." I think it's interesting that it's the highest percentage in the choices that are given. Only 12 percent after the report said "Do more research."

Now, if you were to interview tobacco industry people, it would have been close to 100 percent that said "Do more research."

I think it's very interesting on page 11, the question is asking people who smoke, "Do you think you may change your smoking habits in any way?" Of those who said yes, it was identical before and after the report. Of those who said no, it was nearly identical. In fact, people who said no actually went down after the report was released, so, no, they wouldn't change their smoking habits.

I thought that was very interesting. Again, it goes against what the industry says in its own defense, that the report was -- had such an impact on the public that, you know, people knew about it and were worried about it and were going to do something about it. And I think this suggests that

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people were not. I think the worry came in when the low tar and filter cigarettes were promoted the way that they were.

Q. But look at page 10. It does state at the bottom of page 10 that before the report 66 percent of men said they smoked cigarettes. Afterwards, 51 percent said they did. Doesn't that suggest to you---

A. That suggests it was a different sample. Why didn't they go to the same people and ask the question? That's not how they did this opinion research, obviously. You have to ask the exact same people in order to make that a relevant statement.

I mean, you are going to try to tell me that in 10 days, in 10 days after the report, smoking among men went from 66 percent to 51 percent because of that report, in 10 days? There's no way.

Q. That's a remarkable difference, isn't it?

A. It would never happen. That's why I say you would have to go back and ask the exact same people.

Q. But that criticism would seem to invalidate all the results of this; isn't that right?

A. Certainly many of them, it may.

Q. For what other reasons are you relying upon this opinion and research document?

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A. Just the fact that I think the industry relies on this kind of information in order to take the actions that they do.

Q. I'm sorry. Could you read that back?

(Thereupon, the answer referred to was read by the reporter as above-recorded.)

Q. I'm sorry, Mr. Solberg. What do you mean by that?

A. Well, I gave you an example earlier of low tar and filtered cigarettes, lights, ultra-lights, those kinds of things. This is the kind of research that's conducted for the industry in order to understand how people are going to respond to a new product, new advertising campaign, new package design, whatever it might be.

Q. The industry is trying to meet the wants and needs of its consumers, correct?

A. They are trying to exploit the fear of their consumer.

Q. By the introduction of low tar and filtered cigarettes?

A. And lights, ultra-lights, anorexic things, and whatever else you want to call them.

Q. Low tar and filtered cigarettes were introduced before the 1964 report, correct?

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A. If you look at the number of people -- I'm talking about the fear factor here. How did the public react to the Surgeon General's report, and then look at the surge of the advertising for the low tar, filtered cigarettes. Low tar and filtered cigarettes were by no means popular before 1964's report. Don't try to tell me that they were. You know that happened in the late '60s, '70s and 1980s, lights and ultra-lights. Those products hadn't been introduced. Certainly there were some low tar products on the market, but if you look at the brands of familiar -- the family brands, they didn't have the 16 or 17 different Marlboros you could choose from in 1964 or prior.

Q. Is there any other reason why you are relying upon this report?

A. No.

MR. McCONNELL: We are going to mark this as Exhibit 9.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 9 for identification.)

Q. Mr. Solberg, this is a Tobacco Institute Newsletter dated January 11, 1973. My question is: For what purpose are you relying upon this document?

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A. Initially I can tell you -- I mean, at first glance -- let me take a moment and then I will tell you.

Q. Please.

A. Could I take a quick break?

Q. Of course.

(Short break.)

Q. (By Mr. McConnell) We have Exhibit 9 in front of you, Mr. Solberg, and the question, as per usual, is: Why, oh why, are you relying on this document?

A. Really the only thing I can see here, other than the fact that I don't think even the World Health Organization had the information on pages 3 and 4 about countries and their antismoking activities around the world -- I mean, I don't think even the World Health Organization had that in 1973. That's really not why I am looking at this.

Why I am relying on this is Dr. Gary Huber, who has worked for, well, Harvard, obviously, because that's where his $2.9 million grant is given to in this example, but he worked at the University of Kentucky and he worked at the University of Texas Health Science Center in Tyler, Texas.

Gary Huber was the director of a research

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project that -- I think it was termed one of the industry's special projects, and received millions and millions of dollars from the companies.

Now, again they tried to pretend that this was independent research, but the money was funnelled through the Council for Tobacco Research. There are many letters of existence out there where Gary Huber is thanking the attorneys from Shook, Hardy & Bacon and other law firms for helping him to receive his funding from the industry. And I would put Dr. Huber in the same boat I would with the American Medical Association in helping the industry pretend that there was still the smoking and health controversy and, therefore, more research needed to be done.

Q. Have you ever met Mr. Huber?

A. No, I never have.

Q. Do you have an opinion as to whether or not Mr. Huber's statement in paragraph 1 is a dishonest statement?

A. According to what he has said today, it would be a dishonest statement, yes. According to his public comments today, it would be a false statement then that he made.

Q. What public comments are you referring to?

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A. He said that he's duped by the tobacco industry. He's been written about in the newspapers. Dallas Morning News did a piece on him. He was shown on some television show. I don't remember which one. He was supposed to have testified in the Texas lawsuit in the state of Texas against the tobacco industry, which never went to trial.

Q. Being somebody who lives in Texas, were you aware that while Dr. Huber was at the University of Texas there was some controversy regarding Dr. Huber?

A. Yes.

Q. Involving misappropriation of funds?

A. That -- I have only heard that, and I don't actually remember if I read that or if someone told me. I can't be sure. But I had heard something like that from some source.

Q. Is there any other reason why you are relying on this document?

A. No.

Q. All right.

(Thereupon, a document was marked as Defendant's Exhibit No. 10 for Identification.)

Q. Mr. Solberg, this is a document that

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references a December 29, 1971 meeting.

A. 1974.

Q. I thought it was -- oh, well, I may have stapled together something that didn't go together, but if you look -- you're right. The first page is Key People At Leo Burnett U.S.A. On P.M. Tobacco Business as of August 1974 and the second page says December 29, 1971. The Bates numbers are consecutive, but I don't know what that means. Well, why don't you just---

MR. HOAG: Just to follow up, the next page is 1972 and there's different dates on every single page, so it's probably cumulative.

Q. Let's just call this a composite document. Apparently it's not one actual document, it's several, but we'll treat it as a composite document, Exhibit 10, and you can tell me why you are relying upon any of the documents that are stapled here together.

MR. HOAG: I don't know if you mentioned it, but at the top right-hand corner of the first page it says Exhibit A and then the next page says Appendix B and the third page doesn't say one way or the other. Neither does the fourth and fifth.

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MR. McCONNELL: So, clearly, these are separate documents, you're right.

Q. Well, anyway, Mr. Solberg, the question still stands as to the extent to which you are relying upon any of the items in these documents.

A. Well, these are all meetings between employees of Philip Morris and Leo Burnett, the ad agency that worked on several of the cigarette brands for Philip Morris. And there's a couple reasons -- I mean, I don't know that I have actually -- did I give you all of these? Some of them don't look familiar.

Q. These are all from the boxes that I got from you.

A. Okay. It may be that I didn't look at one of them. But for the most part -- I can't say this document. One of these documents discusses the possible layout of warning labels in various promotions, and the reason I kept this, that flagged me to think about this document, is some of the various eye tracking studies that have been done on warning labels and the way that they have been placed and colored in certain ways as to be sort of ineffective. Not that I think warning labels do anything other than protect cigarette companies from

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certain liability, but also the golf promotion advertising that's being discussed on, it looks like the fourth page, the fourth document here, in 1972, it was an example of the industry moving into sports either before or shortly right after the advertising ban on television.

Q. This was a Par for Parliament promotion; is that right?

A. That sounds familiar. I would have to reread this. Just one moment.

It doesn't say what the copy in the ad is. It's just the theme that they are using. A golf theme goes along with the, you know, the sports theme that was beginning to pick up at that time, or had begun to pick up by that time.

Q. Can you tell whether or not this golf theme is a theme that was in ads or it was part of an actual promotion of golfing events?

A. No. I believe this was actually an advertisement. I may be wrong. Hold on just one moment.

Apparently it's both. According to the document, it's an advertisement that promotes an event, so it's both print -- it's an ad that's talking about a golf event that's coming up.

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Q. How does that support any of your expert opinions?

A. Well, I have discussed the way that they handed out premium items at the, you know, at these events. I mean, that's been going on since they held these events is, you know, handing out whatever it is that they hand out, T-shirts, caps, visors. I don't know what they handed out at this specific event, but it talks about handing out.

Q. Is it your opinion that handing out such items at sporting events causes nonsmokers to smoke?

A. What does that have to do with this document here?

Q. I am asking if that's part of your opinion.

A. If handing out cigarettes to people at an event -- it certainly causes people to smoke, sure.

Q. I thought you were referencing handing out promotional items.

A. That's one of the promotional items. It's free products. In fact, in my last deposition I told you that that's how I received my very first tobacco product, was at an event at the state fair where I was handed a free tobacco product.

Q. I don't remember if you told me this. You then smoked the cigarettes?

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A. It was chewing tobacco.
Q. So you chewed it?
A. I chewed it.
Q. Because it was free, somebody gave it to you, so you chewed it?
A. That's correct.
Q. Do you have any opinion, at least in terms of quantification, of the impact this golf promotion, "spread" is what they say, had upon causing nonsmokers to start smoking?
A. Would you repeat your question?
Q. Let me rephrase it. Do you have any evidence that a single nonsmoker started smoking as a result of Parliament's golf promotion?
A. I don't know that such evidence would exist. You would have to follow everybody who was at the golf promotion and find out whether or not they started to smoke.
Q. And you don't know of any such evidence existing, correct?
A. I don't. I think one of the other reasons in saving some of this and looking at Leo Burnett was Mr. Udow, who used to work for Philip Morris, he may still -- I have no idea if he is or not or is still living or not. But he, among other people at

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Philip Morris, worked with Leo Burnett on developing ad copy for low tar cigarettes. That's not mentioned in some of these. That's why I say I don't know if either there were supposed to be more stapled in this or none of these were or maybe I sent the wrong documents. But Mr. Udow had worked with Leo Burnett in holding focus groups, going over the results of those groups, and looking at how to better promote some of the low tar lights, ultra-lights. I believe Merit was one of the brands he worked on. Parliament was probably one of the brands he worked on. Marlboro Lights.

In looking at some of the results of the focus groups, it was very clear that what was going on was exploiting the perceived or the fear that people had in smoking a regular brand. Some of the things they would say would be, you know, "If you're going to smoke, you've got to smoke this, these cigarettes, because they are safer."

Q. Do you have an opinion that if those low tar products had not been offered on the market, that more people would have completely quit smoking?

A. Yes. I think more people would have quit smoking. I think that they were looking for something that they could feel was not going to hurt

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them as much as something else did.

Q. Is there evidence to support that conclusion?

A. I guess, you know, the tobacco industry would have most of the evidence in terms of the research on low tar cigarettes.

Q. Well---

A. In terms of the marketing of it and the sales of it.

Q. You seem to have collected quite a lot of internal documents. Do you have any---

MR. HOAG: He wasn't finished with the answer.

A. I'll finish what I was saying.

Q. Sure.

A. I think if you look at the sales of low tar cigarettes -- let's take, for example, filters. What do 97 percent of the people who smoke have in common? They smoke a filtered brand. If you ask them, as Leo Burnett and Philip Morris did in focus groups, they will answer the very same question. If you walk on the street right now and ask the question, they will give you the exact same answer, that it's safer, that it's safer.

So the answer to your question is a lot more

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people are smoking filtered and low tar and light and ultra-light and super slim and so on and so forth cigarettes rather than quitting, because the industry has implied that this is a safer product.

Q. But do the surveys show that these people who are smoking---

A. You don't need surveys. Sorry to interrupt you.

Q. Are there surveys that show that people that smoke filtered cigarettes, though they may believe they are safer than nonfiltered cigarettes, that they believe the filtered cigarettes are safe?

A. You are trying to distinguish between the word "safer" and "safe"?

Q. That's exactly right.

A. There's a very fine line there. I don't know that a survey could determine that from people. "Safe" meaning did no harm at all, none whatsoever?

Q. Right.

A. Certainly the industry -- I don't know if the industry has done that research or not. I don't know if an advertising agency has or not.

Q. Do you know if anybody has?

A. I don't know, but I would suspect there are a number of people out there that think that smoking

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Merit Ultra-Lights is safe, that they are not going to get lung cancer. If they knew they were going to get lung cancer, heart disease, lung cancer, whatever, don't you think they would stop smoking? Don't you think they would try a little harder, rather than switch to an ultra-light brand, from a regular brand to a light, ultra-light?

Q. You think people would quit, right?

A. That's right. They would.

Q. In fact, a lot of people have quit.

A. But that's not what we are talking about. We are talking about people who switch from regulars to lights to ultra-lights, super slims, or whatever else it is.

Q. Is there any study that quantifies the effect of filtered cigarettes on smoking initiation rites?

A. Ask your question again.

Q. Is there any study that quantifies the effect of the existence of filtered cigarettes upon smoking initiation rites; that is, is there a study that shows that because there are filtered cigarettes there are X more smokers now than there would be if there weren't?

A. I don't know that such a study exists.

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MR. McCONNELL: I'm going to ask the court reporter to mark Exhibit 11.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 11 for Identification.)

Q. Mr. Solberg, this appears to be an interview with William Campbell, then the president-CEO of Philip Morris, USA. It's in the Advertising Age issue of November 19, 1990. This was in the materials that we received from you, and the question is, why are you relying upon it?

A. Initially I would say that the primary reason was Mr. Campbell's statements about shifting advertising dollars into promotional, which is nothing different from the other tobacco companies. That's very consistent. That's really about it.

MR. McCONNELL: Okay. I am going to ask the court reporter to mark Exhibit 12.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 12 for Identification.)

Q. Mr. Solberg, this appears to be a fax to you from a Barbara Zolty at World Health Organization.

A. Uh-huh.

Q. It involves a prevalence of smoking rates in

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France, Canada and Australia.

A. Correct.

Q. My question is, to what extent are you relying upon this for your opinions in this case?

A. I used this data in my thesis, in preparation of my thesis, in looking at the specific countries and the sports sponsorship of -- sponsorship of sports by tobacco companies in those countries.

Q. I note that in the prevalence of smoking handwritten table in France, it lists daily smokers and it lists percentages and appears to be a percentage of people age 15 and up, let's say, for 1989 who smoke; is that right?

A. You are looking in France, 1989?

Q. Yes. I'm just trying to make sure I am reading this accurately.

A. Age 15 and up, correct.

Q. For 1989, 48.2 percent of males smoke and 32.8 percent of females smoke; is that right?

A. That's correct, yes.

Q. Do you know who gathers these statistics?

A. That's a very good question. I know that it's simply shared with the World Health Organization. They don't have a budget to collect

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this kind of data. My understanding is that it's done country by country, and within each country it's different. In the United States it's every state health department, through a grant from the Centers for Disease Control, goes into the behavioral risk factor surveillance system.

Q. So the selection of the age parameters is done by the government, correct?

A. In the United States it is. I am not aware of exactly how that data is collected in France, Canada or Australia.

Q. It appears, Mr. Solberg, that the rate of smoking, prevalence of smoking in France, went down from 1989 to 1993, correct?

A. That's correct.

Q. And it went down in Australia in 1985 to 1993, correct?

A. Yep, that's correct.

Q. But it actually looks like it went up in Canada. Is that right?

A. According to this data, yes, it went up. That's correct.

Q. Do you have an opinion as to why Canada is this eccentric exception?

A. That's a good question. I don't think I

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made any notation of that in my thesis. One of the sort of -- I think if you look at France between 1989 and 1993, you see a dramatic drop between '92 and '93. And the problem there is the data. They have a question mark as to whether or not that was age 18 plus or who that was. And I don't know that they -- they were not sure whether it was daily, occasional. So you would have to look at the bottom there, daily plus occasional. I think 1993 was probably reported on occasional smoking or only daily smoking or something like that, rather than both of them combined.

Q. Do you know how the---

MR. HOAG: Wait.

Q. I'm sorry. Did you finish?

A. I'm done.

Q. Do you know how the prevalence of smoking rate in the United States compares with these three countries?

A. In terms of trends or---

Q. Well---

A. The smoking rate in the United States over the past decade, 15 years, has declined by a little less than 1 percent per year. Actually, it's quite a bit less than that. Probably half a percent per

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year over the last decade and a half, maybe two decades.

Q. Do you know if currently the prevalence of smoking rate in the U.S. is higher or lower than in these three other countries?

A. Currently, because it leveled off starting about '93, '94, and started to pretty much stay the same, so I guess you would have to ask me about '93, because that's what the data here shows, and it would appear that we were closest to the smoking rates in Australia, although women smoking in the United States, it would be higher than 21 percent, like it is in Australia. It's more like 24-1/2 percent, I believe, here now. That would be where I would say, roughly about that in 1993.

Q. It sounds like, from what you are saying, that the prevalence of smoking rate for males in the U.S. is lower than in these three other countries?

A. Yes, slightly lower than that of Australia. It's about, I want to say 27-1/2 percent in the United States. We are talking about 1993 here.

Q. Do you have an opinion as to why the prevalence of smoking rate in the U.S. is lower for males than in these three other countries.

A. Well, I think part of it is a cultural

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factor, if you look at France. I mean, if you have ever been to France, especially Paris, you would swear that everyone smokes. There's just -- it's a cultural -- the social acceptability of smoking in France is such that it's everywhere. Canada has had similar problems in terms of clean indoor air legislation that France has had up until just recently, so we may see the trend different if we were looking at 1999 statistics up in Canada, and France even. It may be different.

I think, to answer your question, it's probably the clean indoor air legislation in the United States that has had the largest impact on smoking rates in this country.

MR. McCONNELL: I am going to ask the court reporter to mark Exhibit 13.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 13 for identification.)

Q. This is a document entitled Tobacco and Health, compiled by the AMA-ERF Committee in 1978.

A. Yes.

Q. The question is: For what purpose are you relying upon this document?

A. Well, a number of reasons, really. I went

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through the entire document. The reason I went through it was, number one, I wanted to see the kind of research that was being supported. I wanted to look at the research, the researchers who were being supported and the institutions who were being supported, and then look at where else the funding was coming from. That's a lot to say out of one document.

There were 795 abstracts in this document. Thirty percent of those research projects were either funded -- were also either funded by the Council for Tobacco Research or a tobacco company directly.

Another reason for going through the document was to, I guess basically was looking at the fact that this was not independent research, as it was touted by the tobacco industry, and it was touted by the AMA, for that matter, that this was an independent research project. I mean, if you look on page -- see if I have it. Maybe it's not here. Just one moment.

They thanked the six tobacco companies who gave the money. If you look at page Roman numeral viii, they thanked the Council for Tobacco Research and admit that the AMA-ERF Committee maintained a

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liaison to that group, to that organization, CTR, and I thought, most importantly, was the names of those who served on the committee over the years. I have mentioned some of those already: Dr. Charles LeMaistre, Dr. Maurice Seevers, and Dr. John Hickam. All served on the Surgeon General's report in 1964, the first Surgeon General's report. And the very fact that the AMA-ERF Committee for Research on Tobacco and Health would not endorse the report of the Surgeon General from '64 makes me wonder whether or not LeMaistre, Seevers and Hickam had frontal lobotomies in between the time the report was released and the time they decided to serve on the committee for AMA-ERF.

In addition to that, Maurice Seevers provided advice at at least one meeting between the AMA-ERF and the tobacco industry, suggesting that the industry add nicotine to cigarettes.

Also, Dr. Little and Dr. Seevers were on faculty at the same university, the University of Michigan. So Dr. Maurice Seevers and Dr. Clarence Cook Little from CTR were on faculty at that university, which received a large amount of money from both the AMA-ERF and from CTR.

The institutions that Dr. LeMaistre worked

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for, Southwestern Medical School in Dallas, was the largest, received most of the money that the AMA-ERF handed out. It was in excess of $2 million.

Dr. Roy Ritts is the person who really confirmed all of the things that I thought had happened at that time, discussing -- in fact, he said LeMaistre made off like a bandit, padding his research budget at his university, but he went through and listed those that I already listed: Dr. Bing, Dr. Larson, Dr. Kotin. He talked about the misguided directions of the project and how the AMA-ERF pretended to be completely separate from the AMA, wouldn't listen to its delegates and all they did was really follow the leadership of the AMA, which was the executive vice-president and assistant executive vice-president, Blasingame and Dr. Howard -- Dr. Blasingame and Dr. Howard.

Ira Singer is important in that he was a liaison to The Tobacco Institute. He really served as a secretary for most of the project and continued to provide information about the research and about specific AMA publications, such as JAMA, to the Tobacco Institute.

Also, this looks like it's -- well, it is photocopied from the final publication, because the

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original drafts of this publication that were shared with the tobacco industry, including its lawyers, cited Dr. Paul Larson as the editor of the report. And here it says, "Compiled by the AMA-ERF Committee for Research on Tobacco and Health.

So there were some changes that were made from the earlier drafts, but drafts of this were shared with the industry prior to its publication.

Q. You referenced a recommendation that nicotine be added to cigarettes?

A. That was Dr. Maurice Seevers.

Q. How is that relevant to your opinions in this case?

A. I think Dr. Maurice Seevers, the work that he did with the AMA-ERF, most benefited the industry. I don't know that he had a relation with Dr. Little prior to his taking on this responsibility, but I think -- you know, Dr. Ritts talks about the money that's involved here. You are talking about $18 million given to an organization over 14 years. That's what the industry paid the AMA. And, you know, Dr. Ritts talked about Swiss bank accounts, the buying of prostitutes at various meetings. You know, this was a corrupt committee. There is no question it was. They were taking money

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for their own institutions and they were helping the industry pretend they were actually doing research in the process.

Q. But back to the specific recommendation of adding nicotine. How is that relevant to your opinions?

A. Well, the question that I would ask is, why would a physician who is working for the AMA tell tobacco companies to put nicotine in their product unless he felt that that was somehow going to help them, which I think it had the potential to do so.

It's not explained in the documents why he said that. He said -- I think specifically he said -- I won't quote him, but along the lines of that he felt the company should add nicotine to their product and then try to filter it out with a filter.

Q. Did any Surgeon General report also recommend exploration of possibly elevating nicotine levels in cigarettes?

A. I have read that. I don't know where I have read that. I mean, I don't know what report it would have been, but there's been research done. You have to remember, the Surgeon General's report didn't put that in its conclusions or its primary

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statements, but it cited some of the research that had been done out there that suggested adding nicotine may in fact get some people to decrease their smoking because it would be unpleasurable for them.

Q. Doesn't it make sense if you smoke for nicotine, and it's the tar that contains the constituents that are harmful, that if there is more nicotine in the cigarette, you may end up smoking fewer cigarettes and get less tar? Doesn't that make some sense?

A. It's possible. It's possible. According to what I have stated earlier today, that is possible.

Q. Do you believe that the research that was supported by the AMA-ERF invariably constituted a whitewash of the cigarette and health issue?

A. What do you mean, "whitewash"?

Q. That it was always research that was favorable to the tobacco industry.

A. It was research that had very -- most of the research had very little to do with the stated objectives of the AMA-ERF, and I am making that statement not just from my own review of some of the research and the documents and the reports, but firsthand experience with those who were there at

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the time that this was happening. And I have mentioned those people already, including some industry people.

Q. The last page of this exhibit, which is xiv, do you have that in front of you? In the large middle paragraph there is a sentence about two-thirds of the way down in that paragraph that states: "The committee believes that the bulk of research sponsored by this project supports the contention that cigarette smoking plays an important role in the development of chronic obstructive pulmonary diseases and constitutes a grave danger to individuals with preexisting diseases of the coronary arteries." Do you see that sentence?

A. It's in the big paragraph, I know that.

Q. Yes.

A. How far down is it?

Q. About a little more than halfway, almost two-thirds. "The Committee believes---"

A. I see that.

Q. I am going to ask you to read that sentence.

A. Not out loud. You just did.

Q. Just to yourself.

A. Stopping after "coronary arteries"?

Q. Right. My question is: Does that sentence

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suggest to you that there was some independence on the part of the AMA-ERF, that they weren't simply doing the tobacco industry's bidding?

A. But they had already said that it was a risk to people. They said that in 1964. And if you read that sentence carefully, even in 1978 when this came out, or '77, they still were not on record as stating what the Surgeon General's report stated in 1964 based on the research that had been done to that point. So here you are talking about a 14-year period where the AMA said, we have to have more research, we have to have more research, the same thing that the industry was saying, and they still, in 1977 at the end of this project, could not make the same conclusions that the Surgeon General's report made in 1964. And I think that's very significant.

Q. What was the conclusion of the Surgeon General Committee in 1964 regarding causation --

A. The primary---

Q. -- of chronic obstructive pulmonary disease?

A. I don't know. The primary cause, I don't remember. I would have to look. If you have a copy of the Surgeon General's report, I would be happy to look at the conclusions. But the primary

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conclusion, the number one conclusion in '64 was that smoking had a cause and effect relationship with lung cancer. And even in 1977 the AMA refused to state that, even though they knew that to be true and even though they say it today. And their defense is that they were duped by the industry, according to Lonnie Bristow.

Q. Do you disagree with that defense?

A. Yes, I disagree with that defense.

Q. Why do you disagree with that defense?

A. Because everyone whom I have spoken to that was there at that very time, with the exception of the deposition of Dr. Howard, states exactly the opposite, that they worked very collaboratively with the industry.

MR. McCONNELL: I am going to ask the court reporter to mark Exhibit 14.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 14 for Identification.)

Q. Mr. Solberg, this is a letter to you from David Ball, on behalf of the Marlboro Adventure Team. It includes an official application form for the Marlboro Adventure Team. My question is: Why are you relying upon this document?

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A. First of all, I'm not sure how I was selected to be a recipient of this letter. There was a test market -- gosh, 1991. There is no date on this that I see here on the letter. I think it was in 1991.

MR. HOAG: There is a date somewhere here.

A. Oh, okay. Yes. It says 1991, at least on the ad copy. On the advertising copy it says 1991.

MR. HOAG: It's on the second page.

A. This is shortly after I moved to Houston, Texas and this is a -- I mean, it's a promotion for the Marlboro Adventure Team, which was being test-marketed in the state of Texas that year.

The reason I am relying on this is, number one, it's a very good example of how direct mail by the industry targets everybody, because I have no idea how I would have received this. And, number two, it discusses the connection between Marlboro and sports in great detail: white-water rafting, four-wheel driving, motorcycle racing.

I don't know if I used this in my thesis as a reference or not. I may or may not have. I don't recall.

Q. So before receiving this application, you

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hadn't written in to Marlboro, phoned in, or anything like that, to express any interest in the Marlboro Adventure Team?

A. I have no idea. I don't think so. I may have. I don't recall doing so.

Q. If you look at the first page of the official application form, Mr. Solberg, it does state that applicants for the Marlboro Adventure Team 1991 must be a resident of Texas, aged 21 years or older as of March 1991, been a smoker and have a valid Texas Class C or Class A driver's license, correct?

A. Correct.

Q. Is it fair to say this is aimed at people above 21 and that they smoke?

A. How are they going to verify that information?

Q. Well, isn't there a form for filling in your date of birth?

A. Yes. How are they going to verify that information that's written in, the date of birth information or the fact that someone smokes or doesn't smoke?

Q. Well, at the bottom, isn't there a required certification to that effect, that somebody is 21

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years of age or older and a smoker?

A. That's what it's asking for, but any teenager can, you know, sign their name and put a different date on there. I am just asking, how would they possibly verify that? I don't know. The thousands of people that respond to this, or millions, however many do, how could they possibly verify that information?

Q. So is it your opinion that Marlboro should have assumed that people would lie?

A. I think they should take the responsibility in their advertising to be as responsible as they can. This is not a responsible ad.

Q. In your opinion, what should Marlboro have done to ensure that only people age 21 and older and who are smokers would be able to submit these applications?

A. As I said, this is not a responsible form of advertising for the company. The company says they don't target children, they don't want children to smoke. That's great, but, you know, then be responsible and live up to those statements. Don't pretend that you are, you know, not going to have people under the age of 21 even responding to this.

What happens if an 18-year-old responds to

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this who is legally old enough to smoke and wants to sign up for this thing and he simply changes the date by three years?

Q. What is the age that you have to be in Texas to be able to drive?

A. Sixteen. Well, 15 with a permit. Sixteen for a driver's license.

Q. But, in your opinion, if Marlboro wanted to conduct an Adventure Team and wanted to permit 21 years and older smokers to participate, what should they have done with this application to ensure that?

A. First of all, this shouldn't be sent out. This is an advertisement in and of itself for Marlboro. That's what I'm saying. This is not a responsible ad. This is a direct mail advertising.

Q. Is this an advertisement for Marlboro?

A. It's got it plastered all over the place. There's one, two -- you want me to count Marlboros on here? Okay. It's all over the place. There's probably on the first page alone at least four mentions of Marlboro, five mentions of Marlboro. One, two, three, four -- four on the second page, three on the second page. One, two, three -- I mean, is that not an advertisement for Marlboro cigarettes or not?

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Q. Do you know whether anybody under the age of 21 became a member of the Marlboro Adventure Team?

A. Became a member? What constitutes membership in the Marlboro Adventure Team? That's a farce anyway.

Q. Why do you say it's a farce?

A. Because we went to investigate. There's no such thing.

Q. What do you mean there is no such thing?

A. We went, not during the test market, when they expanded this program nationally, we went first to Grand Junction, Colorado, which is where we thought it was. It was not there. We went to Moab, Utah to find them there, and of course that's where it was.

This is a farce. This is not a team. What constitutes joining? How do you become a member? Simply by filling this out and signing up? Does that make you a member of the Marlboro Adventure Team? Or is it when they supposedly pick 10 winners out of the questions that they have asked so they can take their picture while white-water rafting and put it in a Marlboro ad?

This is just -- it's developed a notion that if you smoke Marlboros, you're on the team. If you

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like Marlboros, you're on the team. If you, you know, if you send in your application, you're on the team. It's just a -- it's an example of the way the industry likes to include everyone.

Q. Well, presumably you are supposed to be able to answer these questions accurately; isn't that right? I mean, there are right and wrong answers, aren't there?

A. Have you ever ridden a horse? That's pretty easy to answer. Talking about the test questions?

Q. Sure.

A. Maybe that's why I didn't respond to this advertisement, because I didn't know the answer to, "To control a motorcycle, your body positioning should be---"

Q. Do you know whether anybody submitted this application who was under the age of 21?

A. Do I know any of them?

Q. Do you know whether anybody under the age of 21 submitted one of these applications to Marlboro?

A. Only the people that received this mail would have that information.

Q. Do you know whether anybody under the age of 18 started smoking Marlboros as a result of seeing this Marlboro Adventure Team application form?

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A. I think that Philip Morris mailed the people on this mailing list cigarettes. That would have been either a year or two later, when Marlboro Medium came out. Many of the people who respond to these kind of surveys get to receive the new product in the mail. They sent out a very fancy box that had two packages of Marlboro Medium cigarettes.

I got a copy of that, too. Now, I didn't smoke them because I don't smoke.

Q. But do you know whether those cigarettes were sent to anybody under the age of 18?

A. The only people that could answer that -- you don't have the answer. You could not -- according to Philip Morris, and I will give them the benefit of the doubt, if they got a date on here that suggested that I was under the age of 18 or 21, as they state, that they would not have mailed that out. Okay, I will give them the benefit of the doubt. That doesn't mean that someone who is 16 or 17 years old who wants to join this didn't write down their name and put a different date for their birth date.

Q. Do you know the extent to which that happened, if at all?

A. You are asking me for information that only

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those individuals who decide to join would know.

Q. So you don't know?

A. I don't know.

Q. And do you know whether the Marlboro Adventure Team---

A. But neither does Philip Morris, and that's the point. So if they say on the one hand, we are not advertising to children and we don't want children to smoke but we don't know if our advertising affects children or not, I think that's irresponsible. They are saying very loud and clear, and they have for, you know, 30, 40 years, that they don't advertise to children.

My feeling is -- and I think it's, you know, they are caught in between a rock and a hard place. If smoking is not bad for you, according to the tobacco industry, why not advertise to children? Why not get all the children in the world smoking if it's not going to harm anybody and does not cause disease? If that's the case, you know, it hasn't been proven yet, why not get kids to smoke?

My feeling is that they are irresponsible in their advertising and they can't even say to themselves with a clear conscience that "We may have influenced somebody, and you know what, we may have

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started some kids to start smoking. We may have influenced that decision."

Q. Do you know whether the Marlboro Adventure Team influenced any minors to start smoking?

A. I think what you are doing is taking one advertisement out of context of the barrage and ubiquitous nature of cigarette advertising. Do you think advertising influences consumer behavior? Which I stated in my last deposition, yes, it does. Does it cause kids to buy cigarettes? Yes, it does. That's the very nature of cigarette advertising.

Q. My question is about the one you have determined -- the advertisement in front of us, one of the new reliance documents. Do you know whether this advertisement caused any minors to start smoking?

MR. HOAG: I am objecting because it's been asked and answered. That's the exact same question you asked and he answered already.

A. I will add to your question. I will add, if I did indeed answer it, that I would place this in the context of all the cigarette advertising and say that this has an influence on young people's buying behavior.

Q. All right. What is your evidence that this

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advertisement had an influence on young people's buying behavior?

A. If it didn't, cigarette companies wouldn't do it.

Q. Well, do they do the Adventure Team now?

A. Yes, in some countries they do, sure. In Germany, which is where it started in 1984.

Q. Have you seen any studies, surveys or statistics showing that the Marlboro Adventure Team advertisement or promotion, whatever you want to call it, resulted in any minors starting smoking?

A. You reworded the question. Ask what you just said again.

Q. I am trying to make it more specific. Have you seen any studies or surveys or any data showing that the Marlboro Adventure Team caused any minors to start smoking?

A. I don't know that such surveys exist.

Q. So the answer is no, you haven't seen it?

A. I have not.

MR. McCONNELL: Why don't we mark as our next exhibit some information from Sports Illustrated.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 15 for

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Identification.)

Q. Mr. Solberg, I have handed you Exhibit 15, which appears to be two ads taken out by Sports Illustrated.

A. Uh-huh.

Q. I am going to ask you why you are relying upon these documents.

A. These are advertisements paid for by Sports Illustrated in the United States Tobacco Journal, which has changed its name so many times I don't know what it's called now, inviting cigarette companies to advertise more in Sports Illustrated.

Q. How is that relevant for your opinions in this case?

A. Well, it ties into sports marketing. It's an example of the way in which the audience for sports is easily reached by tobacco companies in their cigarette, through their cigarette advertising.

Q. Well, the audience for sports is easily reached by anybody who wants to advertise in Sports Illustrated, right?

A. Certainly.

Q. They say on the first page, Sports Illustrated says in the third paragraph: "In fact,

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no other newsweekly reaches men 18 to 49 as efficiently as we do." That's a true statement, isn't it?

A. Yes. "Newsweekly" is the key word there, because there's other publications that are either daily or monthly or biweekly that reach that segment of the population probably far better than Sports Illustrated does.

Q. Do you know whether or not---

A. That doesn't -- just because they didn't say in their advertisement 16 to 49, you shouldn't imply that 16-year-olds don't read this. The librarian at, you know, Pick-Any-Junior-High-School, junior high school or elementary school in this country, is probably somewhere between the ages of 25 and 49. And that's a woman who subscribes to this -- usually a woman, I didn't mean to be sexist there -- oftentimes is a woman who subscribes to this publication for the hundreds if not thousands of students in her school.

Q. All right. So the point you are making is that many young people also read Sports Illustrated, true?

A. This is correct. And they can't measure that accurately. The number of young people and the

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ages that they are reaching, because they don't -- they are measuring this on those people who fill out the survey, who subscribe to the publication.

Q. What about MediaMark numbers and Simmons numbers? Don't they look beyond?

A. Sure. They try to look at readership. Most of the data does not come from a school library. It is now. Whittle Communication and Channel 1 started getting into the schools. There was much more attention placed on readership and viewership in the schools. Prior to the early 1990s, late 1980s, that was not a major focus. What was a major focus was physician waiting rooms or dental waiting rooms, those kind of places where they could more easily track, you know, the number of patients who came through, so to speak.

There's a company called Ebsco, I think, that has one division of it that does that kind of research.

Q. Even if a number of young people also read Sports Illustrated, doesn't the fact remain that if an advertiser wants to reach male adults in the younger spectrum, 18 to 49 let's say, Sports Illustrated is a very good vehicle for reaching those adults?

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A. Yes, it is.

Q. Is there anything wrong with even tobacco companies trying to advertise to males between the age of 18 and 49?

A. I don't think there is anything wrong with tobacco companies advertising in Sports Illustrated or other publications that tout themselves as reaching that age group, but I do have a problem with tobacco companies saying they don't target children with their advertising. And I don't like the word "target" because, as I said in my last deposition, you cannot prevent the influence of your advertising on children. You cannot divide this world into those who are 18 and older and those who are not. It doesn't exist.

Q. So what are you supposed to do if you are an advertiser and you really want to reach just 18 to 49-year-olds, let's say, and especially males, all right? And you would agree Marlboro is basically a male image brand, true?

A. Well, it's the number one brand among women.

Q. But it has a male image. You make an interesting point, but that's right, though?

A. It has a male image. It has a male, macho image.

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Q. Marlboro is a frequent advertiser in Sports Illustrated, correct?

A. Yes.

Q. Often the back cover, true?

A. Yes. Often -- I have a Sports Illustrated at home that has a two-page foldout from Marlboro --

Q. Some locations in magazines---

A. -- that you can hang on your wall so you have a picture of the Marlboro car, by the way.

Q. Some locations in magazines are preferable to others in terms of advertising impact, correct?

A. That's correct. That foldout would be a great example.

Q. A foldout is very strong, a back cover is very strong?

A. Yes.

Q. The inside front cover is strong?

A. That's correct.

Q. Inside pages are not so good as the rest, correct?

A. They can be. There is a creative way to use some of the inside. The middle section, where it's bound in the center, is great. Next to a coupon, especially if it's your coupon, is great. It flips right over to your page. Looking at the right side

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of the page instead of the left-hand side. So there's lots of placement in the magazine that's considered fairly good placement.

Q. Do you know whether or not the various brands of cigarettes compete to try to get the better placement in certain magazines such as Sports Illustrated?

A. Yes, they do.

Q. For example, Marlboro will try to lock up the back cover on Sports illustrated and keep some other brands off the back cover and bury them on the inside, true?

A. That's correct.

Q. If an advertiser such as Marlboro wants to reach males 18 to 49, and understanding that people under the age of 18 are also going to read Sports Illustrated, what are they supposed to do? What is your recommendation as an expert in this area?

A. What are they supposed to do?

Q. That's right.

A. Do I get paid for this? Will Philip Morris pay me for this advice?

Q. Rosenblatt and Hoag are going to pay you.

A. I doubt that. I don't know the answer to that question. I don't know the answer to the

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question on cigarette advertising and what do you do about it. You can't ban it. We discussed that at length in my last deposition.

So what do you do about it? I don't know. I think you have to take a look at, you know, the bigger picture and decide what you want to do about this whole issue. I think if there was an answer to that Philip Morris would have tried to maybe figure it out, and I don't think they probably can either.

The problem is that they are caught in the middle, and unfortunately what they are doing is, instead of, you know, sort of acknowledging a few things that might be possibly happening out there in the world, they are denying all of it and they are saying, "No, this isn't true and cigarette advertising doesn't influence children and look at all the research that suggests it doesn't," rather than simply stating, you know, what's the difference between a person who is 17 years old and a person who is 18 years old besides one month. Nothing.

So this could very easily read 17 to 49-year-olds. The reason they do that is because Sports Illustrated knows that this is a sensitive issue to the cigarette companies. That's why they put 18 to 49. This could very easily read 16 to 49.

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Q. Well, this is an ad that Sports Illustrated took out in a tobacco journal, correct?

A. That's correct.

Q. Do you know whether Sports Illustrated has taken out any similar ads in journals for industries that market products that clearly are designed for minors?

A. You know, that's a good question. I don't follow some of the industries that are out there, so they may have.

Q. But you don't know one way or the other?

A. I don't know.

MR. McCONNELL: Let's mark Exhibit 16.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 16 for Identification.)

Q. Mr. Solberg, you were just referencing the fact that you can't ban cigarette ads and, lo and behold, here is an exhibit that talks about bans on cigarette ads in various countries. This is a document we received from you. My question is: Why are you relying upon it?

A. I cited it in my research, my thesis.

Q. And this business---

A. Or I may have, I should say. I don't know

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specifically if this -- I had pulled so many off the computer data base that I don't know if this is actually one that was cited at the end or not, but I probably used this in my research.

Q. This Business Wire article references a study edited by Professor Boddewyn regarding cigarette ad bans in various countries, correct?

A. That's right.

Q. The study concluded that advertising is an insignificant factor in the initiation of smoking among juveniles, right?

A. Yes, according to the article that's written here and to the study they are citing.

Q. Do you have any basis for challenging the data or methodology employed in this study?

A. Yes.

Q. Okay.

A. They try to control for variables in their research, looking at advertising bans. The one variable you cannot control is tobacco industry advertising. So in these countries that they are citing here, like New Zealand, Norway and some of the others that have supposedly banned advertising, no such advertising ban exists. It has not been removed from the culture of those countries.

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In fact, in some cases, if you look at Hong Kong, Thailand -- I don't think that one is cited here -- it has actually become worse, more prevalent than it was prior to the advertising ban.

Q. Was that true for every one of the countries discussed in this study?

A. The reason I chose this was because I was specifically looking at France, Canada, Australia and the United States. And Australia and Canada are cited in his article, this Professor Boddewyn's article.

Q. On the second page of this article in about the middle, there is a paragraph that says, "Juveniles were shown a list of factors that might have influenced their starting to smoke. Among them, advertising was given as the reason for starting to smoke by only 3 percent of juveniles in Kuwait and the Philippines, just 2 percent in Argentina, Australia, Hong Kong, Sweden, and Turkey, by less than 0.5 percent in New Zealand, and by 0 (zero) percent in Italy, Japan, Kenya, Norway and Spain."

Do you have any basis for challenging that conclusion?

A. This was the favorite argument of the

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industry. Their favorite defense is to say, "Go ahead and ask anybody and they will deny that they were influenced to begin smoking from a single ad or from advertising in general."

You know, it's really silly in a way to even focus on this, because here you pay advertising agencies like Leo Burnett, who does more research on kids than any other advertising agency in this country, and you pretend that you have never been privy to that information, you pretend that it doesn't, you know, that you can't actually get someone to go and do something, a child or whatever, when you know that it's wrong.

So what the industry likes to do is to focus on, you know, silly questions like, "Do you know anyone who saw an advertisement who began smoking because of that advertisement?" It's ridiculous to even ask those kind of questions.

MR. McCONNELL: Could you read back my question, please?

(Thereupon, the question referred to was read by the reporter.)

A. My answer still stands, and I will add to that that we are looking at a report of a publication or a paper that this person has

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presented. We don't have the list that this guy -- the multiple choices that this person gave his subjects.

I think the very fact that 3 percent of children actually cited that advertising was the reason that they started smoking is pretty shocking, and should be to the industry, considering they say that advertising doesn't ever start people smoking, teenagers especially.

So I think that if I was the industry and looking at this, I would say, "Oh, this is shocking to us. We have been saying for the last 45 years that advertising doesn't get anyone to smoke."

Q. So do you accept these figures, reject these figures, or you just don't know whether or not they are accurate?

A. I would like to know more about the professor who did the study and I would like to read his study.

Q. You haven't read the study?

A. I haven't read his full study, no.

Q. By the way, have you ever seen studies where people are asked what are the reasons for their selection of a particular brand of cigarettes, and advertising is one of the possibilities? Have you

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ever seen such a study?

A. I don't know that I have. I mean, I may have. I don't recall at the moment.

Q. Do you believe that self-reporting by people as to why they started smoking or what brand they started smoking and the effect of advertising is unreliable?

A. Do you think -- are you influenced by advertising? Everyone is influenced by advertising. Do we want to admit that we are as influenced as we are? Hell, no. No one wants to admit that, because we walk around like a bunch of stupid robots doing whatever the ad says.

My brother would argue with me, who is a cancer researcher at UCLA. He would argue that he's not influenced by advertising. I would say, "Pull out your wallet." He pulls out his wallet. He pulls out the credit cards, Saks Fifth Avenue, Macy's. They only sell generic kinds of things at those stores, don't they?

That's an analogy to our society. We are brand specific and we are branded through advertising at a very young age for many, many products.

Q. Well, that's why I asked you the question,

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have you seen studies about self-reporting the influence of advertising in terms of brand selection. If those numbers are higher than the numbers you have seen here, would that be consistent or inconsistent with what people just said?

A. I have not seen those studies. I mean, I would have no way to comment if those are real or not real. I have no idea.

Q. Have you seen studies where people are asked why they voted for a particular political candidate and a certain percentage would say it was advertising?

A. I know that there are -- I mean, I haven't actually looked and examined the results of a poll, but I have read about them in newspapers.

Q. And the percentage of people who say advertising is the reason why they voted for a particular candidate is fairly high, true?

MR. HOAG: Object to the form of the question. It's overly broad and vague.

A. I don't know. It may be. As I said, I don't recall. You would have to show me a survey or poll or study.

(Thereupon, a document was marked as Defendant's Exhibit No. 17 for Identification.)

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Q. Mr. Solberg, Exhibit 17 has been placed in front of you. It is the Marlboro Van Team Manual, which you supplied to us. My question is: Why are you relying upon this document?

A. It's an example of advertising outside of your normal advertising media. It utilizes a very unique media that I think is less controllable than the ads in Sports Illustrated that we were just talking about.

I have seen these vans. I have photographs of these vans. I have photographs of those working in these vans handing out free cigarettes and free caps and T-shirts, despite the fact they were not supposed to hand out free cigarettes. They were only supposed to give you a prize or promotional item if you went into the store and bought a pack or two of these cigarettes.

This was not unique to Philip Morris. To Marlboro, I mean. There was many vans. Salem had a video van, I have got a photograph of those as well, where they opened the back doors and played loud music videos in parking lots in the inner city.

Also, this -- actually, this came to us from an individual in the state of Hawaii, who was discussing this promotional campaign in that state,

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and told us that Philip Morris, at least some of the people in Philip Morris, were trying to target an Asian population, and in order to do so they needed brown YAMS for this promotion -- and the YAM is Y-A-M, which stands for brown young adult male -- in order to reach the Asian population. This was a person who worked at Philip Morris, so---

Q. Any other reason why you are relying upon the Van Team Manual?

A. No.

Q. The document references switch selling. Do you know what that is?

A. Switch selling?

Q. Switch selling.

A. I don't know. I would have to read the document and look at the context of it. Do you want to tell me what page it's on?

Q. Yes. It looks like it's on page 11.

A. Oh, sure. It's if you don't have my brand, if they don't have your brand, try this brand or try this product.

Q. Do you know to what extent, in terms of dollar amounts in the U.S. cigarette market, how much of those cigarette dollars are attributable to switch selling or alternate purchasing, which is

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another word used for that?

A. I would have no idea. That would be information that the industry keeps.

Q. But does this not show you that one purpose of the Marlboro Van Team is to try to go out and get people who smoke competitive brands to switch to Marlboro?

A. Again, you know, the number one reason given for people buying another brand, in the studies that I have seen, has been because the regular brand wasn't there. That doesn't mean that they switched to that brand for the next 10 years. It means that they have bought that brand because, you know, they were out of Marlboro Light 100 Menthols in a box.

Q. But it can happen, can it not, that somebody who is a Camel smoker, for example, buys Marlboro Reds instead and smokes---

A. And stays there.

Q. It's a better cigarette.

A. Sure.

Q. We'll all agree right now, since there is nobody here from RJR, that it is a better cigarette, true?

A. I would have no idea. I have smoked both Camel and Marlboro and I still couldn't tell you.

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Q. If you look at page 6, Mr. Solberg, once again the Marlboro Adventure Team rears its head. In the second paragraph it says: "The consumer will be exposed to this national program in 1993 and beyond in which smokers 21 years of age and older will be encouraged to apply to 'MAKE THE MARLBORO ADVENTURE TEAM.'" Do you see that?

A. Yes.

Q. And there's also discussion in this van manual about the types of smokers that people who work for the Marlboro Van Team can encounter, true?

A. Yes. That's in here, yes.

Q. Is it not the case that in this Van Team Manual, again and again the people who work for the vans are instructed to deal only with people who already smoke?

A. Sure they are.

Q. And people who are over---

A. That's their -- I'm sorry. That's the instruction that they are given in this manual.

Q. And people who are over the legal age for smoking, correct?

A. According to the manual, yes.

Q. Page 8, for example. You and I were talking before about Marlboro, its male imagery. If you

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look at the first bullet point it says, among the goals and objectives, the first is to provide an opportunity to communicate directly with Marlboro's audience, young adult male smokers. Do you have any reason to disbelieve that?

A. Disbelieve that young adult male smokers are a target audience?

Q. That is a goal of the Marlboro Van Team, to communicate directly with young adult male smokers.

A. Do I have any reason to doubt that?

Q. Right.

A. Not at all. In fact, according to the employee who worked for Philip Morris or Powerforce, that's exactly what she said. Unfortunately, she was the wrong color to do what they wanted her to do.

Q. Again, on page 13, Mr. Solberg, at the bottom it says, "At store sales you will be offering adult smokers 21 years or older various incentive items when they purchase Marlboro." Correct?

A. It's correct. However, they don't check the identification at the van. They check the identification in the store. That's where they are supposed to, in the retail establishment. These vans are parked in front of a gas station or

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convenience store. You go in, you buy a pack of Marlboro or whatever you are buying, you come outside with your Marlboro packs, your Marlboro Lights and say, "This is what I bought. Give me my prize."

Q. Let's look at page 16.

MR. HOAG: Wait. Were you finished?

A. That's been my experience in how this works.

Q. All right. Let's look at page 16, please. There is a section called Consumer Contact Techniques. The third bullet point says: "Be sure the consumer is age 21 or over. If you're not sure, you must ask for identification."

A. But it doesn't say -- they may be sure. They don't have to ask. It's not mandatory that they ask for an ID.

Q. Well, if they are sure, you know---

A. How can you be sure if you are not asking for an identification?

Q. Look at me. Are you sure I'm over 21? Would you ask me for an identification?

A. It depends on what you were wearing when you approached me that day. I don't know.

Q. I could be wearing anything you can imagine and you would still know I'm over 21.

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A. And if a 16-year-old dressed up, dressed in a tie like that, driving up in his dad's car, would you ask him or not?

Q. Well, if you are not sure, you---

A. You are not required to do it, and that's part of their irresponsibility. We all know that.

Q. So your theory is that they should ask everybody for ID no matter how they look?

A. I am not providing theories and I am not providing -- I'm saying that if you look at the facts, they are not responsible. If they want to say, you know what? Some kids slipped through. And you know what? Sometimes their advertising influences children's buying behavior. And you know what? Sometimes a kid might start smoking because they went to a Marlboro race and thought it was so great and they got their free packs and started smoking. They are not willing to say that. They are saying just the opposite. They are saying, "We don't target people, children. We go to every measure to make sure kids don't smoke."

Q. If you go into a liquor store, they proof some bodies but not everybody, correct?

A. That's correct. I still, at the age of 33 when I go in to buy a six-pack of beer at many

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grocery stores and liquor stores, am asked to show identification.

Q. You look very young, Mr. Solberg. That's probably why.

A. It's only because I shaved this morning.

Q. But the fact remains that a lot of people, like myself, will never ever be able to fool anybody into thinking we are under 21. Is there anything wrong with somebody looking at somebody, being sure that they are over the age, and not asking for identification?

MR. HOAG: I am going to object to the form of the question. Do you want to know whether or not that's ever happened to him, as far as being asked for ID, if he gets free cigarettes?

A. When I was in eighth grade, at the state fair in Minnesota, and I was given a free tobacco product, nobody asked me for identification. It was just simply given to me.

MR. HOAG: We already stipulated he looks really young, even now at 33.

THE WITNESS: In eighth grade I looked even younger.

Q. The question is, what is really irresponsible -- that's your word -- with the van

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team program when the instruction is you have to interact only with people 21 or older and if you are not sure you must ask for identification? Aside from not having the van team program at all, what are they supposed to do? I know you don't want to give advice. I'm trying to flesh out the nature of your criticism. That's all.

A. My criticism is that the tobacco industry -- I am going to say this for like the eighth time in the deposition. The industry has said what they don't do, what they don't target, who they don't target, who is not influenced by their advertising. And what they have said is flat out a lie. It's a lie. They can't prove that some kid is going to walk up to this Marlboro van and do exactly what he's not supposed to be doing. But they are saying that never happens, that won't happen. They are not admitting that it happens.

Q. Well, let's---

A. It's irresponsible for them to lie about that.

Q. Let's say they are not saying it never happens. Let's say they are saying, "We are doing what we can to prevent it from happening." Now, is this Van Team Manual consistent or inconsistent with

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that claim?

A. Is this van promotion geared at someone who smokes of your age? Is that what the trinkets that they hand out -- is that for the 40-year-old male? Is that for -- no. It even says in here they want the young male, brown YAMS.

Q. 21 or over. What's wrong with that? If they are trying to get incentives for people 21 or over, what in the world is wrong with that?

A. Sixteen-year-old boys are also young males. They are young adult males.

Q. But they are not 21 or over.

A. But they don't know if they are or not. They may not be sure.

Q. Well, if they are not sure, they have to ask for identification, according to the manual.

A. According to the manual.

Q. This manual is an internal document, correct?

A. As far as I know, it is.

Q. It's not an advertisement?

A. No.

Q. It's not a public relations document, correct?

A. No.

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Q. I mean, this is the document---

A. This is a training document for the employees of the Marlboro van promotion.

Q. Also on page 16, the fourth bullet point states: "Be sure the consumer is a smoker. Ask them to 'Show us your pack!'" They must be carrying an unopened pack of cigarettes to qualify to receive incentives." Correct?

A. That's correct.

Q. So doesn't that make it clear that the van team program can't be used to try to get nonsmokers to start smoking?

A. Again, you are going to pretend that the industry is going to say that advertising doesn't influence anybody to do anything other than to switch brands if they already smoke. That's the only line that they are giving. The very fact that this says Marlboro splashed all over the outside of the van, all over the products they are handing out, and just because you don't go in and buy a package of cigarettes doesn't mean you are not influenced by this advertisement.

Q. I am just asking about the van team program now. I am not talking about the overall gestalt. My question is: Doesn't this show, on page 16, that

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the only people who can interact with the folks working the Marlboro vans are people who are already smokers?

MR. HOAG: Objection, asked and answered.

A. It's totally crazy, because I don't smoke. I didn't buy any cigarettes. I have gone up to the van promotions and have interacted with these people. I try to learn about what they do. I try to understand about what it is that they are doing.

Q. When you have done that and you go up to the people at the Marlboro van -- and you don't have a pack of cigarettes already, true?

A. That's correct.

Q. Because you are not a smoker?

A. That's correct.

Q. Do they give you a free pack of cigarettes?

A. I have never asked them for cigarettes.

Q. Have they offered you free cigarettes?

A. No, they haven't. Not at that particular -- I have been to two of -- three of their promotions and at those three promotions they didn't offer me a free package of cigarettes.

Q. Doesn't this document also make the person who wants to work for the Marlboro van sign an

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agreement that they will only provide cigarettes to current smokers ages 21 and above?

A. Show me what page it's on and I will verify that. It very well may be.

Q. It looks like it's about page 52. It says Marlboro Gear Truck Certification. Do you see that?

A. Yes.

Q. It says: "This certifies that I have been instructed by representatives of Philip Morris U.S.A., or their designated distributing agency, of distribution guidelines and restrictions.

"I will offer incentive items only" -- the "only" is underlined -- "to smokers who are 21 years of age or older, and who have purchased the required Marlboro product from a participating retailer, and I will follow all other distribution guidelines and restrictions.

"I recognize that I am subject to immediate dismissal if I offer the above-mentioned incentive items to any smoker who is not 21 years of age or older and has not purchased the required Marlboro product, or if I violate any distribution restrictions."

How is that irresponsible?

A. This is exactly the same thing as sending in

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the Marlboro Adventure Team. I mean, an employee is going to sign this form, and just because the employee signs this form means that a kid never ever will get into a retail establishment, buy a package of Marlboros, go out in front and get his free gear? Is that what the industry wants to say? Sure, that's what they want to claim.

Q. No, that's not the question, Mr. Solberg. Is this a responsible effort to try to minimize that from happening?

A. That's a good question. I honestly couldn't answer that because I would like to see a little more effort put into what it is that they are saying. Again, I'm going to go back to if they want to say, "We don't target children and it doesn't influence children, advertising doesn't influence children, the Marlboro van promotion doesn't influence children," how can they make the statement that it doesn't influence children? You're getting down to a specific, you know, transaction that's occurring, that happens millions of times in this country every single day. And suggesting that this is responsible and suggesting that this is not responsible for those millions of transactions, you are trying to compare one child, you know, who is

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buying a package of cigarettes, or not buying a package of cigarettes, at one promotion. This is one of hundreds of millions of promotions that are going on every single day in this country.

MR. McCONNELL: Let's mark Exhibit 18, please.

(Thereupon, a document was marked as Defendant's Exhibit No. 18 for identification.)

Q. Mr. Solberg, this is a list of Philip Morris contributions for the year 1991, correct?

A. As far as I know, that's what it is.

Q. We received this from you.

A. Yes.

Q. How did you compile this list?

A. I did not compile this list. It was given to me by Yorkshire Television, who was doing a documentary on the tobacco industry and was here in the United States, and they actually obtained it from someone at the company.

Q. Why are you relying upon this document?

A. I think it's important to point out, as I mentioned in my last deposition, the allies of the tobacco industry, various organizations who come to the rescue of the industry. For example, health organizations, there are many health organizations

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in this list that have received large contributions from the industry, arts organizations who have defended the industry's position on clean indoor air legislation in various cities in this country, African-American organizations who have defended the industry's right to advertise, have defended the industry and come to its rescue in clean indoor air legislation and the threat of increased cigarette excise taxes.

Some of the organizations mentioned here that have received funding from Philip Morris have received that at events where free cigarettes are given out to the public.

Q. Is it your opinion that Philip Morris contributes money to charitable organizations in order to buy political support?

A. They have. Do I think it's quid pro quo? Yes, I do. I said that in my last deposition.

Q. So when Philip Morris gave a thousand dollars to Action for Soviet Jewry, they were buying political support?

A. In that case, I don't know. You asked me have they done it. I said yes, they have.

Q. So you are saying in some cases yes, in some cases no?

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A. In some cases yes and in other cases I may not know. I may not be privy to that information. Philip Morris has documented their quid pro quo with some of these organizations. In other words, there's documents that say, "We gave this amount of money and this amount of product and this amount of promotional items to, you know, X minority organization and in return this is what they said they would do for us." And that's all on the same page.

Q. Philip Morris gave about $22,000 to Citymeals-On-Wheels. Do you think that was purchasing any sort of political support?

A. Again, I have already answered earlier that they have documented it themselves and I have seen some information on some agencies where a quid pro quo exists.

Q. Are there any examples in this list of where you believe a quid pro quo has been established?

A. I know that there are. Could I name those for you right now? No, I would have to go back to another list.

The Heritage Foundation would be one.

Q. In what way?

A. They have given $40,000, it says here, 1991.

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They have given a ton of money to the Heritage Foundation. The Heritage Foundation is -- I guess it's considered a right-wing foundation think tank up in Washington, D.C. They have done an enormous amount of work on behalf of the industry, not just Philip Morris, in terms of looking at policy in this country and other countries.

Q. There are a number of African-American organizations listed here; is that right?

A. Yes, there are.

Q. Do you believe that all those contributions to African-American organizations were merely cynical efforts to purchase political support?

A. No. They have other motives as well. I didn't say that was their only motive. One of their motives is simply to buy complacency in that very community.

Q. Are there any other examples of quid pro quos?

A. In this list, yes, there are. Can I name them for you at this time? No. There is another list that I provided to you that has the name of the agencies and exactly what Philip Morris received in return for their contribution to those agencies. Most of those are minority and women organizations,

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and that was a document that was, I believe, written in 1988.

MR. McCONNELL: Why don't we mark Exhibit 19, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 19 for identification.)

Q. Mr. Solberg, this is a document entitled Philip Morris Tobacco Constituency Group. My question is: Why are you relying upon this document?

A. I am not relying on this particular document. I don't know why it was copied and sent to you.

Q. That was easy.

MR. McCONNELL: Mark this as Exhibit 20, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 20 for identification.)

Q. Mr. Solberg, this is a Philip Morris interoffice correspondence to Buffy from Jim, dated May 9, 1990. Subject: Taxes.

A. It would be Kathleen Lanahan.

Q. Okay.

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A. Who loves to play tennis, I understand.

Q. And why is it that you are relying upon this bit of interoffice correspondence?

A. This is one of a series of memos regarding lobbying efforts of the industry from their -- primarily in their Washington office. And I would have to look at this particular document to see if this one all by itself meant anything to me. It probably means a great deal more if I were to look at the stack of documents that go with this.

This is discussing taxes and a possible tax increase in 1990, even though George Bush had said "Read my lips, no new taxes," and they were worried about him going back on his word.

There was an economic summit in Houston Texas, in 1990 that very year, that Philip Morris sponsored, threw great parties for all kinds of members of congress and so on and so forth, in order to convince them, I guess, not to increase taxes. But this is a list, this is from sort of a larger collection of documents that discusses taxes that I will rely on.

Q. How do these series of documents regarding lobbying efforts by the tobacco industry to prevent taxes from being raised, how do those documents

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support your opinions in this case?

A. It's examples of lobbying. Jim Dyer is the person who is mentioned here. Jim Dyer worked for President Reagan. He was a deputy assistant to the president for legislative affairs. Then he left and worked for Philip Morris and then he came back to work for President Bush, George Bush, also as a deputy assistant to the president for legislative affairs.

The reason that he's an important person, an important player, is that he did not honor the one-year cooling off period from the time he left the White House, went to Philip Morris's Washington office, and began lobbying. It was a matter of I think maybe a couple of months, and I think it's important to document not only the revolving door, but the fact that some laws were actually broken in that case, that he didn't honor the one-year cooling off period for lobbying his former employer.

Q. Certainly the tobacco industry is not the only industry that lobbies Washington on the issue of taxes, correct?

A. It depends on what kind of taxes you are talking about. Talking about cigarette excise taxes?

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Q. Sure.

A. There were other allied organizations that work with and on behalf of the tobacco industry, including advertising agencies that have contracts with the various tobacco companies and so on and so forth, that lobby against cigarette excise taxes.

Q. Certainly with respect to taxes in general, many other industries also lobby Washington, D.C., true?

A. There's a lot of industries that lobby in Washington.

Q. Is there anything that the tobacco industry does in terms of the lobbying techniques it employs that are unique in any way?

A. I think the revolving door is a very important one. Just so you know, make sure you know what I am talking about, you probably already know, leaving a government agency and going to work for Philip Morris and then going back in literally---

Q. That happens in the defense industry all the time.

MR. HOAG: You weren't finished.

A. I wasn't done. I think there's some very important people, though, when you are talking about higher level justice department people in the United

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States that used to work for a tobacco company and they went in, and used to be a lobbyist for a tobacco company or lawyer for a tobacco company, and went and worked high, high up in the justice department at a time when there was a large effort in this country to get the U.S. Justice Department to crack down on the televised sporting events in this country and nothing was happening, despite the fact that it had happened earlier in the justice department, but not while those people were there.

So what you saw was while those people were in office, prior to them getting there, the justice department did crack down on that. They sent out notices, and I gave you copies of those notices, to Virginia Slims tennis tournaments and boxing matches that were sponsored by cigarette companies. But during the time that those people that had worked the industry were in office, nothing was happening, despite the fact that there was a large effort in this country by several organizations, including the one I represent, to have the -- to petition the justice department to do something about it.

James Rill is one of those attorneys, and another name escapes me right now, but I have it in my office.

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Q. James Rill was head of the antitrust division, true?

A. Yes, that's correct.

Q. This so-called revolving door is not unique to the tobacco industry, right?

A. I don't -- not at that level of government. It certainly isn't in government -- I mean, the revolving door has existed since government has existed.

Q. The defense industry, isn't that really the most notorious example of the revolving door?

A. That would be another example.

Q. Are there other examples you can think of?

A. Not at that level of government, when you are talking about the president's office and, you know, the highest people in the justice department.

(Thereupon, a document was marked as Defendant's Exhibit No. 21 for Identification.)

Q. Let me give you Exhibit 21, which I propose to be the last exhibit before our lunch break, if that's all right with everybody.

MR. HOAG: This is No. 20?

MR. McCONNELL: 21.

Q. It's entitled, A Study of Cigarette Smokers' Habits and Attitudes in 1970, prepared for

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Philip Morris by Roper Research Associates. My question, Mr. Solberg, is, what are you relying upon it for?

A. This is certainly a long document. I'm not going to comment on all of it. One of the reasons was -- a couple reasons. One was the information that was gained from the survey, the Roper survey, if that's who did this, was the fear that I talked about earlier, people continuing to smoke despite the fact that they were worried about cancer. And then the research in looking at filters and tar levels in cigarettes again, where I stated earlier that I feel the industry has exploited the fear of some and offered the solution to their fear, which would be the low tar, ultra-light type cigarettes.

Q. Where do you see the evidence in this document of the efforts to exploit fear?

A. I am making a comment about the research results that I am looking at here, talking about people worrying, "Cancer is beginning to really worry me," and then later on talking about---

MR. HOAG: What page were you on?

THE WITNESS: There are no page numbers here.

Q. You can refer to the Bates numbers,

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Mr. Solberg. That will help.

A. Okay. The latter numbers are 50011.

MR. HOAG: The people that are -- the worrying comment that you mentioned?

THE WITNESS: Yes.

A. I think that this survey is important because it confirms the focus groups that Leo Burnett conducted in roughly the same time period, you know, early '70s, late '60s, that talked about why, you know, people liked the low tar cigarettes, because one way to look at it is to say they are not as worried. That's not what they said. I mean, they are stating here in this that even -- what they are stating in this, actually, is different words than some of the focus groups that Leo Burnett did. Leo Burnett was saying, yes, it's safer, that's why I would smoke, you know, ultra-lights. Here they are saying---

MR. HOAG: You need to clarify. When you say "Leo Burnett was saying," do you mean Leo Burnett was saying or people were saying?

THE WITNESS: No. In the focus group conducted by Leo Burnett, people were talking about reasons that they smoked, what they liked about low tar cigarettes. And I think that it's related to

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the same kind of research. This is a survey done by just a different agency that discusses people's fear and worry about smoking.

Q. (By Mr. McConnell) What the study is about overall, the purpose of the study, is to examine brand habits, brand attitudes and brand images, right?

A. That's right.

Q. And the study does note that the percentage of smokers was declining, correct?

A. That's what the study says, yes. This is 1967, I believe.

Q. And in fact that's true, in '67?

A. Certainly it had declined, yes.

Q. And it did say that the decline in smoking appears to be correlated with a rising concern over the health hazards of smoking, correct?

A. I would agree with that statement in 1967, correct.

Q. That's no surprise to anybody, is it?

A. No.

Q. The study also noted -- this is on page 50008 -- that smoking has also declined among all educational groups, with the greatest declines among the least well-educated (grade school or less) and

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the best educated (college). Do you see that?

A. Yes. Again, this study is based on 3,000 people, so just keep in mind that's not necessarily a large sample considering what just happened in this country.

Q. Do you disagree with that conclusion, at least as of '67?

A. I am not going to disagree with what's printed in the report here in terms of what they found. I don't think they are lying. I think that's the data they collected at that point in time in 1967, based on the response of 3,000 people.

Q. Is there anything in this study that makes a suggestion about exploiting fear?

A. I think what it does is it tells Philip Morris, and that's who wanted this study done, is that people are scared, and smokers, people who smoke are scared and worried about cancer. This is, you know, '67, so it's right after the Surgeon General's report. And they are exploring what they can do with their advertising, with their brand images, in order to alleviate that fear in the public.

Q. Does it say that anywhere in this document?

A. I am saying that about this document. And

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it doesn't take a rocket scientist or a poll surveyor to figure this out, or some sort of a scientific researcher, to understand what's going on here.

Q. Well, you have seen a lot of internal Philip Morris documents, right?

A. Yes.

Q. Are there any documents that you can name where there is any discussion about exploiting fear?

A. It doesn't use that word. That's the word that I chose to use today.

Q. Is there some similar terminology that you can recall ever appearing in any Philip Morris document that you have seen?

A. This one right here, talking about people who are worried about getting cancer because they are still smoking.

Q. Anything beyond that?

A. I think that's pretty self-explanatory.

Q. Anything else?

A. In the document, no.

Q. Or in any other Philip Morris documents that you think supports your opinion that Philip Morris has been attempting to exploit fear among smokers?

A. I already mentioned the other documents

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earlier. Some of the focus groups that have been conducted in-house or by Leo Burnett.

Q. Do you have those focus groups?

A. I don't have results of them. I just have -- I mean, I've read about them.

Q. I asked, because I don't think you turned anything over to us relating to the Leo Burnett focus groups.

A. I have, I mean, I have a few -- I have -- I mean, there's a lot of memos on advertising in general, but that was one specific -- there might have been two or three memos, I think, that I looked at on focus groups, that have been conducted on low tar cigarettes or something like that. It's either that or I found them -- I may have found that information in one of the trade journals. I don't know.

Q. Are you relying on those Leo Burnett memos?

A. I don't think they were Leo Burnett memos. I think they were Philip Morris memos.

Q. You are relying on those Philip Morris memos?

A. Certainly.

Q. I don't think you turned them over. I will go back and look, but I am going to make a request

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that you turn them over. Since obviously they seem to be pretty important to your opinions, we have got to take a look at them.

I propose we take a lunch break. I am a little more than halfway through my documents. It's almost one o'clock. It's up to you guys how long you want to take.

(Discussion off the record.)

(Thereupon, a lunch break was held from 12:45 to 1:45 p.m., after which the following proceedings were had:)

Q. (By Mr. McConnell) Mr. Solberg, we were talking before the lunch break about your perception from some of the documents that the industry was attempting to exploit fear, correct?

A. Those were my words, yes.

Q. I had asked you about whether or not you had seen other documents of the company that discussed that exploitation and fear. I want to ask a different question now and that is: Were there any advertisements by the cigarette companies after the 1964 Surgeon General report that you believe exploited fear?

A. Sure.

Q. What examples do you have in mind?

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A. The advertisements were pretty much any low tar brand is a direct result of what they have learned through surveys and focus groups, how to reach people that were worried or had some fear about a disease.

Q. Marlboro Lights would be an example; is that right?

A. Sure.

Q. Now, can you think of any Marlboro Lights advertisement that actually contained a misstatement, a lie?

A. Off the top of my head, I can't think of an outright lie in an advertisement for Marlboro Lights. It doesn't mean that it hasn't happened. I just -- that's all advertising.

Q. Can you think of an outright lie in any ad since 1964 for any low tar cigarette?

MR. HOAG: I'm going to object to the form of the question.

A. I can't -- I can't really say that I have seen an ad for a light or low tar cigarette that lied to the public in some way. I think in general those advertisements impress upon the consuming public information about cigarettes in general and light cigarettes or ultra-lights or low tar kind of

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information.

I think, just to give you an example, Carlton has the famous ads. These are the ads that literally continued in medical journals until the mid-1980s. Those were the ones that compare one package of Carlton, or 10 packages of Carlton equals one package of Marlboro. I think that's very deceiving in terms of the message that's conveying to the public, that you could smoke 10 packs of Carlton and get the same amount of tar as one package of Marlboro. I don't think that's a very fair representation.

Q. Is it a false statement?

A. Considering that the advertisement says nothing about or considers anything about the way people smoke and the way that they compensate for low tar cigarettes, sure, yes, that's a false statement.

Q. Well, it sounds like you are saying that they are false in terms of an act of omission, not providing additional information; is that right?

A. That's right.

Q. Insofar as they go, are they false? Do they make any statement that in itself is false?

A. It's an accurate misrepresentation is what

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it is. I am not saying that -- the problem is what the problem is. The text of the advertisement doesn't say what the picture says. The picture shows 10 packages of Carlton equals one package of Marlboro. The message that that image conveys is false.

Q. Now, a lot fewer people, you will agree, in this country smoke Carlton than smoke Marlboro, right?

A. That's correct.

Q. Why is that, given the general perception of the smoking public that cigarettes are dangerous?

A. Because Marlboro has extended its brand family to include light cigarettes and menthol and 100's and so on and so forth. So Marlboro Lights and Carlton aré, you know, both out there.

Q. Marlboro Lights still has more tar in it than Carlton, right?

A. That's correct.

Q. Marlboro Reds certainly have more tar, correct?

A. That's right.

Q. Even Marlboro Reds outsell Carlton to a significant magnitude, right?

A. Yes, I would think it does, yes.

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MR. McCONNELL: Let me have marked for you Exhibit 22.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 22 for identification.)

Q. I am going to ask you first, Mr. Solberg, to tell us what it is.

A. This is a document pulled off the Internet about three years ago. It was the focus of a story in a newspaper article. It may have been the Wall Street Journal or New York Times. It was a significant article in a national newspaper, and the significance of this, first of all, is the -- well, I think it's in the back end here. It's the list of names who were interviewed here for this document, which includes various people from the American Medical Association and the AMA-ERF. And I think the most important information is that of Maurice Seevers from the AMA talking about how tobacco companies should add nicotine to cigarettes. I'm not sure what page that's on.

Q. Who authored this document?

A. The initials, I know what they stand for only from my notes, and I think I have a copy of this possibly somewhere that I have written that on.

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It's not on this copy here. But these are people from the United Kingdom who are looking into the smoking and health issue as well as the legal problems in the United States.

Q. Is there any other reason why you are relying upon this document?

A. On the third page, in the large paragraph in the middle of the page, it's discussing some of the motivations of various organizations who have issued reports on the smoking and health issue and it says, "The AMA appears more concerned with safeguarding the financial interests of doctors through political lobbying than with the doctor's patients."

That's a significant statement in reference to the AMA-ERF program receiving money from the tobacco industry. Dr. Roy Ritts had confirmed to us that the AMA at that time was concerned with gaining the alliance and support of tobacco state congressmen in defeating Medicare in the 1960s, and that was part of their motivation for going along with the tobacco industry in the so-called research program that they did.

Q. Is there any other reason why you are relying upon this document?

A. There's a page in here, I am not sure which

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page, that talks about Paul Larson working under direct contract with the American Tobacco Company. If you give me a minute, I could probably find that.

On page -- since they are not numbered, 13, if I'm counting right.

Q. What's on that page, Mr. Solberg?

A. It's discussing the fact that manufacturers believe that -- that the interviewers here believe that the manufacturers were doing some of their own biological research in relation to their own products, and then it discusses some of the various companies and who was doing the research for them, and American Tobacco Company lists Dr. Larson at the Medical School of Virginia. And I'm assuming that that is Paul Larson, since that was the university in which he was a faculty member.

On the page just prior to that there is an interesting statement that there is a dilemma -- at the bottom of that page, under No. 2, there is a dilemma posed by the lawsuits and that the manufacturers have to choose between (a) and (b). And I think (a) is a choice that I can fairly safely say that they did do, which was if they didn't do smoking and health research, which is what some of the lawsuits at that time, I guess, represented as

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negligent -- here it says in parentheses (although to meet public concern they finance Council for Tobacco Research and the AMA research).

I think that's important because I think that it relates to the public relations activities of the industry at that time touting the research efforts that they were involved in, which, I have already stated, touting of the AMA-ERF project was very misleading.

I think it's important -- let's see. How many pages is that from there? Page 15, under American Medical Association, it discusses, among other things, the bottom of the page there, the board of trustees and the delegates, House of Delegates of the AMA.

One thing it leaves out here that perhaps could have been added to this document, although they allude to this in the document, was that 12 of the 72 resolutions introduced at the 1964 annual meeting of the AMA by its delegates supported and endorsed the Surgeon General's report of 1964. None of those passed. Indeed, none of those made it out of committee because the leadership had already cut their deal with the tobacco industry. And there was one resolution introduced, either from the

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California Medical Association, or from a California delegate, that asked the AMA to end its ties, financial ties and research ties with the tobacco industry, because it was unethical.

The next page, top of the page, it says: Dr. Seevers considers that his committee, meaning the AMA-ERF Committee, should not support research in fields in which tobacco manufacturers have greater competence, such as the constituents of cigarette smoke, how to modify them, how to treat tobacco in the field or factory.

That goes against what the committee was designed to do from the outset, which was to remove the components in cigarette smoke which may be harmful. It also goes against the advice that Maurice Seevers, Dr. Seevers, gave earlier in this document to the tobacco industry, suggesting to the American Tobacco Company specifically that he felt they should add nicotine and then remove whatever components needed to be removed.

Q. Are there any other aspects of this document you are relying upon?

MR. HOAG: It's a long document, so I would just remind the witness to take whatever time is necessary to look at the document.

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MR. McCONNELL: Absolutely.

A. Another part here.

Q. Just for the record, Mr. Hoag pointed out a section of this document.

MR. HOAG: Because it's a long document, unless you really want to take 10 hours for this thing.

MR. McCONNELL: Ten hours? I just want the witness's own testimony and his own reading of the document. He's obviously entitled to take as much time as he wants.

MR. HOAG: Pointing a paragraph out to him doesn't tell him what to do with the paragraph.

Q. Just for the record, Mr. Solberg, what paragraph was it that Mr. Hoag pointed out to you?

A. I don't know. I wasn't paying attention. I'm on a different page.

Q. All right.

A. On page -- I don't know. It says Roman numeral V, Pooling of Research Information. I don't know if you found that.

Q. I have.

A. Toward the bottom of the page it says, "Mr. Finch said that even if the AMA required information from all the manufacturers for research

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purposes, they would probably supply it through an intermediary."

In discussing that very statement with members of the committee on the Surgeon General's report, Walter Burdette and Leonard Schuman, and in discussing it with Dr. Roy Ritts, they did not receive information from the manufacturers, meaning the AMA did not.

A few pages later, under Advertising Themes on TV, the themes by just about everybody's brand mentioned there, Camel, Lark, L&M, Lucky Strike, Marlboro, all the way down the list, either discusses filters, suggests the importance of filters, suggests the importance of the makeup of a filter, and some actually use health claims. Actually, health claim is actually for the Tempo brand, which is interesting.

Q. Well, what it says is no health claim is made for Tempo, only the promise of easier draw, a smoother taste, right?

A. Right. But prior to the time this document was written they had used health claims, very specific health claims, that touted science in their advertising.

Q. Was this an example of corrective

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advertising required by the government?

A. This is prior to any government intervention in their advertising, which happened in '65.

Q. Well, there was still FTC regulation, right, even in the '50s?

MR. HOAG: Object to form of the question. You are arguing about what he just said. He answered the question.

MR. McCONNELL: I don't think I'm arguing about it. I'm talking about a different kind of regulation.

MR. HOAG: They are a government entity, I believe.

Q. (By Mr. McConnell) Do you have the question in mind, Mr. Solberg?

A. Do you want to restate it for me?

Q. There was FTC regulation of the cigarette ads in the '50s, correct?

A. That's correct.

Q. Sometimes that regulation would require corrective advertising; isn't that right?

A. Explain "corrective advertising."

Q. The example that comes to mind is the Listerine example. Do you remember that, when Listerine would put out ads about the mouthwash and

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how it helped reduce colds and it turned out that was a falsehood so they were required to put out ads saying it doesn't do anything to affect cold germs, but it's still really good for you. Do you remember that?

A. I don't. It's funny, when you mentioned Listerine I thought you were going to talk about Listerine cigarettes they used to advertise in the New York Times. There was such a thing.

I don't see these, the themes in these advertisements, as being corrective of anything. This is simply how they had been touted.

Q. I just meant the Tempo.

A. The Tempo ad?

Q. That's all. Where it says: No health claim is made for Tempo - only the promise of easier draw, a smoother taste.

A. I think they are thumbing their nose at the rest of the advertising themes from the other cigarette brands.

Q. What was the multi-filter cigarette?

A. That's a good question, because I don't recall what brand -- what company that came from. I want to say it was R.J. Reynolds because I recall some Winston advertising that touted a multi-filter.

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Q. Are there any other aspects of this document you are relying upon for your expert opinions in this case?

A. According to the document in 1964, the trade in the United States was divided between different kinds of cigarette filters as follows. You look at nonfilters, it's 38 percent of the market. That's a lot of people who were still not smoking filtered cigarettes.

I think my previous testimony described that after the Surgeon General's report was released, which would have been this exact same year, is when you really saw the trend of people switching from nonfiltered to filtered cigarettes and then again to lights or low tar cigarettes. I think that supports that trend.

Q. Is it your opinion that even prior to the 1964 Surgeon General report more people smoked filtered cigarettes than nonfiltered cigarettes?

A. Prior to the Surgeon General's report?

Q. Correct.

A. At what time prior?

Q. Just prior. Let's say two months prior, for example. 1963.

A. More people were smoking filtered cigarettes

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than they were nonfiltered. A large part was due to the reports that came out in the mid-1950s. This is where this is all happening is in the 1950s, and that's why CTR was developed at that time. It's no coincidence, I don't think, that the Council for Tobacco Research was formed to conduct more research when the first hard-hitting reports were being published. Hammond and Horn, I think, came out in '54. Wynder had some pieces in '54. If you wanted to go back to '39, you could look at Ochsner and DeBakey.

Q. Do you think that those studies in any way affected consumer behavior in terms of choosing nonfiltered cigarettes over filtered cigarettes?

A. Considering the fact there were no filtered cigarettes in this country at one time, yes.

Q. Are there any other aspects of this document you are relying upon?

A. The percentage of smokers in the 16-to-24-year-old age group had not declined since the release of the Surgeon General's report earlier that year.

The only other thing that strikes me again is the policy committee of lawyers which I have mentioned earlier and their involvement in assisting

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the industry in how it would promote its product in terms of what they said to the public and their involvement in some of the research that was going on, both with CTR and with the AMA-ERF.

Q. How do you know what these British visitors wrote in this document was accurate?

A. Well, some of the things that I mentioned earlier regarding the AMA were confirmed to me by people who were there at that time that I have spoken to, so if those portions of the document are correct, I would give these people the benefit of the doubt that they did their interviews with all of these people and accurately reported to their superiors what it was that these people said.

Q. Is there any other reason why you rely on the authors of this document as being credible and accurate?

A. Well, it seems to be a very thorough report of the situation in the United States at that time. I mean, some of the cases that they cite up front are cases that are on the public record. You can go look them up yourselves. I think they mentioned one case in 1964, the year that this was written, a case in the state of New York, which was a very, I think, unique case at that time, because they had sued the

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industry based on the conspiracy theory, which I think is very unique for that time frame since that is something that some of the plaintiffs' lawyers are saying is new just in the last five or six years, which I don't think it is. In other words, they sued not only companies, but they sued Hill & Knowlton and the Council for Tobacco Research.

MR. McCONNELL: Why don't we mark Exhibit 23, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 23 for identification.)

Q. Mr. Solberg, this document is entitled Highlights From the Fifth Biennial Smoking and Health Survey. My question is: To what extent are you relying upon this document for your opinions in this case?

MR. HOAG: I think you gave us two. Did you mean to?

MR. McCONNELL: That will be next.

MR. HOAG: Okay.

A. I think page 3 is very interesting results from the survey. It compares, really, what people are concerned about. Cigarette smoking falls more than halfway down toward the bottom of the list,

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about two-thirds of the way down.

It's also interesting that, quote, "Being around people who are smoking" didn't seem to bother the respondents to this survey at that time, which is consistent with the next page, "People who smoke around me" -- it's about two-thirds of the way down the list -- compared to many other, quote, "annoyances" that they have used here.

It's interesting. This is done in 1976 and, really, this is predicting what's about to happen in the country. That's about the same time that clean indoor air legislation began, actually I think '75, when Arizona and Minnesota passed their first state laws. I think that's really where you could link this to.

In terms of people being annoyed -- that's a good word for that time period -- just simply annoyed, elevators and restaurants certainly are very high. I think that the whole notion of smoking sections in restaurants back in the 1970s, which is where it really started, I think this is a predictor of what was going on, a very good predictor of what was going on in the country at that time.

A few pages later, under Smoker Intimidation, I think it's interesting the response,

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and probably the need for clean indoor air legislation, "What do you think about smoking indoors when there are other people?" and the most frequently given answer was "Just light up," both in 1974 and 1976, which goes against everything the industry says about just simply accommodating everybody and being nice about it.

I think it's interesting, the opinions of the tobacco industry in reference to attitudes towards reports on smoking and health, whether or not the industry knew it was true. This is in '74 and '76. Even in 1976 only about half of the people, slightly more than half, felt that the tobacco industry knew it was true.

I think that was against everything the industry says in its own defense in these cases, that public opinion was different.

That's about it.

Q. Do you find that the survey in this exhibit is an accurate survey?

A. Well, this really doesn't provide the numbers here, I don't think, unless -- on the front here it says "National, 17 and up, 2500 people of 17 years old and older." Do I think it's an accurate -- what did you say?

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Q. Accurate survey, the numbers are accurate?

A. For the time period, you know, I really wouldn't have any way to agree with it or refute it.

Q. Then how can you rely on this, any of the statistics you quoted here, if you don't know that this is an accurate survey?

A. I guess one would have to assume, because Roper does surveys, that they, you know, they did it accurately. If I don't have the survey in front of me, all I have is the results, and I don't have the questions and the multiple choice answers that are given, it's hard to know whether or not, you know, those who were surveyed might not have felt another way had they been given another choice on these multiple choice answers.

Q. And you don't know that information for this survey, right?

A. I don't know that information for the survey.

Q. But you still want to rely on it, right?

A. Sure. There are some things on here that I think are important trends in public opinion.

Q. If you look on page -- the Bates number would be 0286. The heading on that page is Credibility of Sources. People are asked to rank

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the most reliable for smoking and health information. Organizations like the American Cancer Society, they are the highest at 66 percent, right?

A. Uh-huh.

Q. Even among smokers they are 61 percent, right?

A. Correct.

Q. Ranking at the very bottom for credibility of sources is tobacco companies, correct?

A. That's right.

Q. Is that survey result in accord with your opinion as to the credibility of the tobacco industry in 1976?

A. Those are pretty low numbers but, you know, I wouldn't disagree with those numbers. I think it's important to notice the second organization on that list, though, that you just pointed out, which is the American Medical Association, and just remember that they were one and the same there, the AMA and the tobacco industry, from 1964 to 1978.

Q. So you believe that from '64 to '78 the AMA was not a credible source on the issue of smoking and health; is that right?

A. That's correct. They simply touted the industry line.

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MR. McCONNELL: Mark this as Exhibit 24.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 24 for identification.)

Q. Mr. Solberg, this is what appears to be an excerpt from the Charlotte, North Carolina Observer, September 26, 1978. Headline: "N.C. Company 1st to Admit Tobacco Link to Rat Cancers."

A. That's correct.

Q. Why is it you were relying upon this document?

A. Actually, I have an original newspaper article from that time. I don't know if it was from the Charlotte Observer. It may have been picked up in another newspaper, but I remember reading the headline.

Well, it says in the article that this was the first public admission by the industry of a link between tobacco and cancer. I think that was the only one that I can think of, until recently Liggett has done the same thing through their CEO, Bennett LeBow. I think this is the only time that a tobacco company suggested that there was any link. Of course, the article goes on to say that it is only

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in animals and they wouldn't apply any of this to humans.

Q. What prompted this article was Liggett's attempt to publicize their development of the palladium cigarette, correct?

A. I don't know. I would have to review this article more. Is that what it says? If that's what it says---

Q. You read it, please.

A. Okay. Dietrich Hoffman in here, Dr. Hoffman from the American Health Foundation, who was a colleague of Ernst Wynder, makes some interesting points in the article. He says at first -- just to provide some information about Hoffman and Wynder, they were both under contract at one point, working directly for the research department at Philip Morris. He says, "On occasion researchers under contract to the industry or a tobacco company have made the same findings in experiments."

I don't know for sure, but I believe he's referring to himself and Wynder.

"The companies in such cases do not legally accept responsibility for the conclusions of these independent researchers," Hoffman said.

I think that's important, that they have not

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accepted the legal responsibility, even when they have hired outside people to come into their own research departments and do research.

Q. Again, back to my question. Is it not the case that what prompted this article was that Liggett was trying to publicize its development of the palladium cigarette?

A. This article does not mention Liggett's palladium cigarette.

Q. If you look at the first paragraph it says, "Liggett & Myers, a leading tobacco company, apparently has become the first cigarette maker to acknowledge tobacco produces cancer in laboratory animals." Right?

A. I see that.

Q. "The acknowledgement in a patent application for a possibly safer cigarette was the first public admission by the industry of a link between tobacco and cancer, researchers told The Observer's Washington Bureau."

So far, so good, right?

A. Sure.

Q. Then you go down a couple paragraphs, and it isn't until about halfway through this page, where you see the paragraph stating as follows: "The

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patent application claimed --"

A. I see it there.

Q. Do you see that?

-- "when a form of the metallic substance, palladium, was added to tobacco with other chemicals, the amount of hydrocarbons in tobacco is reduced and a substantially diminished biological activity of the tobacco smoke on experimental animals is achieved." Right?

A. Right. And Hoffman points out the use of the words "biological activity" by the industry, which is a way of describing what happens when people smoke or when you paint something on a mouse. Biological activity is, you know, a long term for cancer; in this instance, especially cancer.

Again, it goes back to what I said about -- since we are talking about the palladium cigarette here and how it relates to the, quote, "safer cigarette," we had that discussion earlier about what do you justify as being safer. It may be biologically less active, as James Mold would argue probably to this very day, that in terms of cancer, this was a cigarette that they were able to manufacture and gained a patent for that produced less cancer than a regular cigarette would.

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I am not going to disagree with his research on that because I haven't seen it, number one. Number two, it would appear, according to this, and at least seeking out a patent for this, that the company believed it as well.

What I am going to say is that the term "safe" or "safer" cigarette -- because simply by removing certain components in smoke that make it less likely to cause cancer says nothing about chronic emphysema, chronic obstructive lung disease, heart disease, stroke, any of the other many diseases. That's why when we talked about safe and safer cigarette, I said, "Safer than what?"

Q. Well, a cigarette that has reduced biological activity would, according to what you said, not be an improvement at all with respect to some of these other diseases, correct?

A. It may not.

Q. It may not?

A. If they focused the research solely on cancer, which was the big scare at this time, and I can understand why they focused on that, they were probably very excited about having found some way to remove carcinogens through the introduction of the palladium and they were probably -- obviously they

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were excited enough about it to apply for a patent and to go ahead and look further into producing this product.

Q. In fact, Liggett attempted to publicize the palladium cigarette, correct?

A. I don't know that it ever reached the market.

Q. I am not saying it reached the market. Did they publicize the fact that they had taken out patents on the palladium cigarette?

A. Did the company itself or did people who worked for the company?

Q. The company itself.

A. After they left? Certainly this would be one example. If James Mold is still working for Liggett, and which he's not cited in this article -- but I am assuming the company is promoting this idea. Sure, they promote.

Q. Do you know whether the company attempted to publicize the palladium cigarette, such as scientific conventions in South America, in order to---

A. I am not aware if they did or did not. I know that they stated, at least in the earlier memo, Exhibit No. 22, that they would be willing to share

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certain kinds of information with other manufacturers.

Q. Isn't the most remarkable thing about this article the fact that a cigarette company comes out with a cigarette that they claim is a big breakthrough in terms of reducing cancer, and instead of the headline saying "Company Comes Out With Safer Cigarette," the headline is "North Carolina Company 1st to Admit Tobacco Link to Rat Cancers"?

MR. HOAG: Object to the form of the question.

A. I personally think that coming from Dietrich Hoffman, a person who worked for a tobacco company as a researcher with their research department, that the companies don't accept any legal responsibility for what's going on, despite the fact that they had been told, both by their own internal people and by others from the outside who had been hired by them, that it does cause cancer and does cause these other diseases.

Q. Wouldn't you agree that this article, especially this headline, showed, at least in 1978, that for a tobacco company to try to come out with a safer cigarette it's going to boomerang on them,

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because the publicity will be not that this is a safer cigarette, but that this shows how your other cigarettes are really terrible and not safe?

MR. HOAG: Object to the form of the question.

A. Well, I think it's a very vexing problem for any tobacco company to be doing research into a safer cigarette.

Now, my understanding is that they have all been looking for a safer cigarette and the industry, as a group of six companies, funded the AMA to supposedly find a safer cigarette.

Again, to quote Dr. Roy Ritts from correspondence that he's written, it's a vexing problem because, yeah, it would imply that they knew cigarettes were not safe.

Q. Are you familiar with the Philip Morris Accord cigarette?

A. Yes. I mean, I've heard of it.

Q. I mean, do you have an opinion as to whether or not that is in any way deceptive, misleading the public?

A. It's not available on the market. Or is it?

Q. Some places.

A. It's being test-marketed still in some

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places.

Q. Correct.

A. What was the question regarding Accord?

Q. Do you think the Accord is deceptive or exploits fear?

MR. HOAG: I am going to object to the this question because in order for the witness to answer it, as to whether or not it's currently in existence, he had to be provided information by defense counsel. Unless defense counsel is going to testify and give us affidavits that we can use as evidence at trial, this is just speculation on the part of the witness.

My objection is based on that, and specifically that it calls for speculation on the part of the witness and acceptance of something that he did not know until defense counsel told him.

Q. I am just asking you to talk about what you know. If you don't know---

A. I really know very little about Accord. I have read maybe one or two articles about it and that's it. I didn't even know it was still being test-marketed.

Q. So you have no opinion about Accord as it relates to your opinions as an expert in this case,

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right?

A. Again, I don't know enough about that product --

Q. That's fine.

A. -- to make a comment.

Q. Same question with respect to RJR Eclipse.

A. I know a little bit more about Eclipse, which is no longer on the market, at least not under that brand name. They may be test-marketing something else that I am unaware of.

Again, I don't know enough about the test market to understand why it was pulled from the market. I know that R.J. Reynolds has made statements that consumers didn't like it. I have also heard reports that said the vial that came in the cigarette, the burning element could be taken out, and people were smoking crack cocaine out of the portion of this cigarette. So I couldn't comment on it.

MR. McCONNELL: Let's mark Exhibit 25, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 25 for identification.)

Q. This document is entitled The Nicotine

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Program, Mr. Solberg.

A. One second.

Q. My first question is going to be: What is this document?

A. Well, this is a Philip Morris document. This is an outline for Philip Morris's research and development program which was called The Nicotine Program. It states that the program should be carried out within R&D, meaning research and development, to maximize security for a research topic which is highly proprietary. It also discusses the pharmacological importance of nicotine in cigarette smoke.

Q. Now, the document doesn't anywhere state that nicotine is addictive, does it?

A. I don't see that in the document, no.

Q. In fact, at the end of the second paragraph on the first page it says, "We still do not understand the role of nicotine in the smoking habit." First page, second paragraph. "We still do not understand the role of nicotine in the smoking habit."

A. Yes, I see that. At the same time they are calling it the most powerful pharmacologic agent, components of cigarette smoke. So they know that

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it's very important to have it there.

Q. Right. It can be an important pharmacological component of a cigarette without being addictive, right?

A. Well, pharmacology is -- that's the action that it takes on your nervous system.

Q. Not everything with a pharmacological effect is addictive, right?

A. That's true.

Q. What are you drinking, coffee now?

A. And there's a whole group of people that would say that caffeine is addictive.

Q. Are you one of them?

A. No.

Q. This document also says, at the end of the first paragraph, "There is significant evidence that external research is increasing on the action of nicotine in humans." Do you see that?

A. What page are you on?

Q. First page. "There is significant evidence that external research is increasing on the action of nicotine in humans." My question is: Do you know whether or not that's true that, in fact, there was a significant amount of external research underway on the effect of nicotine on the human

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central nervous system?

A. This is not dated and I'm guessing this is in the 1960s, however.

Q. I'm sorry. You are guessing it is?

A. 1960's.

Q. I don't know.

A. I don't see a date on it. So if it was in the 1960s or 1970s, the answer would be yes, I know that there was a great deal of external research on the action of nicotine in humans, and that was through the AMA-ERF. More than half of their research projects that they funded dealt with the actions of nicotine in humans or actions of nicotine.

Q. Do you think there is anything wrong with that?

A. That there was research being conducted?

Q. Correct.

A. I don't see -- do I think there's -- ask your question now?

Q. Is there anything wrong with---

A. That there was external research being done on the actions of nicotine in humans?

Q. Well, you were specifically saying the AMA-ERF, that about half its research was with

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respect to nicotine.

A. The only problem I have with that are the statements made by those who were there at the time who said they didn't need to be doing that research because it had already been done.

Now, there's members, including Leonard Schuman and Walter Burdette, who felt that in 1964 they could have labeled nicotine addictive and smoking addictive, but they didn't do it because they didn't have the unanimous support and they felt that they might have been just overstepping their bounds just a little bit.

Q. Is there any other reason why you are relying on this document?

A. No.

MR. McCONNELL: Let's mark Exhibit 26, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 26 for Identification.)

Q. Mr. Solberg, I will tell you that there were a number of documents produced in the boxes that we got from you regarding interaction between Philip Morris and Washington University. I have selected one. I am going to ask you to comment on

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this document and tell me why you are relying on it, but also, just in general, why you are relying on the interaction between Philip Morris and Washington University.

A. Washington University was a recipient of some special monies from the tobacco industry. I think they called it the Special Projects. That would have included Harvard, UCLA and Washington University.

And with respect to this specific document, I am not relying on this specific document.

Q. Well, then, just generally, with respect to the interaction between Philip Morris and Washington University, is there anything you are relying on in that relationship to support your opinions in this case?

A. One of the professors at Washington University was a statistician, who literally just about everything he did statistically came up different than the bulk of the scientific literature dealing with the health effects of smoking on humans. I thought that was interesting that one of the few statisticians out there in the world would come up with such extremely different numbers that weren't even close to what the body of scientific

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literature had also examined.

Q. Are you capable of critiquing either his data or his methods?

A. I haven't seen all of his data.

Q. Based on what you have seen anyway, do you have any basis to criticize his data or his methods?

A. No. Just the fact that he was sort of a lone ranger out there that came up with completely different data and conclusions in his statistical analysis.

MR. McCONNELL: Mark this as our next exhibit.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 27 for Identification.)

Q. There were a number of documents in the boxes produced to us, Mr. Solberg, relating to Virginia Slims promotions. I have chosen this document, and the next document also relates to Virginia Slims, but I wanted to ask you first what in this specific document supports your opinions in this case and then, just generally, what is it about the Virginia Slims promotions that you find relevant to your opinions?

A. Specifically, the industry has said that

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they are incapable of targeting the way they have been accused of targeting various subgroups and subpopulations in this country and elsewhere.

This is a -- these examples of advertising, especially, you know, describe a cigarette for women only, pretty specifically targeting women, and it comes at a time when the industry was looking at demographics in the United States and looking at the number of pregnancies that were occurring in the United States, and realized that a large percentage of women who became pregnant stopped smoking.

I think it was very important for them at that time to develop a cigarette brand, and it's a promotion that tried to fill in the gap of women and their decreasing smoking because of their pregnancies.

Q. Has Philip Morris ever denied that the Virginia Slims cigarette is aimed at women?

A. They have denied that it's aimed at teenage girls.

Q. Is there anything in this document that supports your opinion that Virginia Slims is somehow aimed at teenage girls?

A. If you look at -- again, you would have to look at the entire campaign. Just this week, for

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example, Jennifer Capriati lost in the first round of the U.S. Open on her third or fourth come-back try. I am not sure what number we are counting on, but her first was -- her first professional tournament was the Virginia Slims of Miami, right here in this very city, at the age of 15. You can't tell me that every little girl growing up and watching her and watching the ball boys and ball girls running around with their Virginia Slims logos on, you can't tell me that the industry wasn't targeting young girls, young women.

Q. Well, if you look at this document, Bates No. 5012, it discusses the print schedule where Virginia Slims ads will appear. There is a list of magazines.

A. Uh-huh.

Q. Looking at those magazines, do those magazines indicate to you an effort to target teenage girls or, instead, an effort to target women ages 25 to 45?

A. I don't know where you are getting those numbers because I am looking at Cosmo, Vogue, Mademoiselle, Glamour. I mean, you're talking about -- you are talking about some of the most popular magazines among teenage girls.

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Q. What is the average age of the readership of Cosmopolitan?

A. Let's not play that game again. We did that with Sports Illustrated. Let's not pretend Glamour magazine is going to be able to tell us they targeted 25-to-50-year-old women when we know very well those are the most popular publications among teenage girls.

Q. Do more teenage girls read Cosmopolitan as opposed to Teen Magazine, Seventeen, or Tiger Beat?

A. Teen, Seventeen and Tiger Beat are for kids that are like under the age of 10, before they start wearing makeup and before they get their ears pierced.

Q. What magazine in the United States do you think most 14-year-old girls read?

A. The most popular magazine among 14-year-old girls in the United States?

Q. Correct.

A. I can't answer the question. I would have to guess. I don't know the answer to that question.

Q. Do you have an opinion as to whether it's any of these magazines listed on this page?

A. I would be willing to bet that if you added up the number of teenage girls who read Cosmo,

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Vogue, Mademoiselle, and Glamour, and you took that number and you compared it to the number of girls who read Seventeen, you are going to probably triple the number of the girls who read Seventeen if you took those four magazines, easily.

Q. Do you have any statistics to support that?

A. No. Neither do you.

Q. I could probably go get them. I am asking, right now you don't have any; is that right?

A. I don't have any.

Q. Have you ever tried to look at the Simmons or MediaMark numbers as to which magazines are most popular among young girls?

A. I haven't, not for that specific information, no.

Q. It wouldn't be that hard for you to do, would it?

A. No.

Q. Is there anything else in this document that supports your belief that Virginia Slims targets underage girls? And, by the way, when you say underage girls---

A. I didn't say "underage girls."

Q. Teenage girls, you said, right?

A. Teenage girls and young women.

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Q. Young women. Do you mean that they are targeting nonsmoking teenage girls and young women to get them to start smoking?

A. They are targeting all women of every age. How's that? We've got it covered then.

Q. There is nothing wrong, is there, with Philip Morris targeting women smokers who are not minors, correct?

A. In terms of legality?

Q. Correct.

A. There's nothing wrong with Philip Morris targeting women who smoke?

Q. Correct.

A. With their Virginia Slims brand.

Q. You agree with that?

A. It's perfectly legal for them to do so.

Q. Among minors, is Virginia Slims a popular cigarette?

MR. HOAG: At what point in time are you talking about? Any time?

MR. McCONNELL: We'll break it down. That's a useful objection.

Q. In the 1990s, would you say that Virginia Slims is a popular cigarette among minors?

A. No, I would not.

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Q. Has it ever been a popular cigarette among minors?

A. It was more popular in the 19 -- early to mid-1970s.

Q. It was more popular then than it is now?

A. That's correct.

Q. Even in the 1970s its numbers were quite small compared with the numbers for various other brands, correct?

MR. HOAG: Object to form of the question.

A. I stated earlier in my deposition that Marlboro Lights is probably the number one brand among all women and probably among teenage women. That's today.

I think that in the mid-1970s you had not only Virginia Slims, but soon after this was launched in '68 you had a few other women's brands that popped up on the screen, and for a while they showed promise. If they hadn't showed at least 1 percent of the market share, we know they would have been pulled from the shelves. To this day there are still Misty, Style, Capri, Virginia Slims, and they still hold enough of the market share in order to be produced. Otherwise, the manufacturers wouldn't do

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it. It wouldn't be worth it.

Q. But the fact is---

A. It was the number -- I'm sorry.

Q. Let me just finish. Then you can come back with your thought if you would like. But my question is: The fact is, isn't it, that the people who smoke Virginia Slims are by and large women ages 25 and up and maybe even 30 and up?

MR. HOAG: Again, same objection as to time frame.

MR. McCONNELL: 1990s.

A. Virginia Slims has always been the number one, quote, "women's" brand, the brand that was made for women.

Q. Right. That's a different answer, though, because even though it's the number one women's brand, what you are saying is it sells more cigarettes than Silva Thins, Capri or---

A. That's correct.

Q. It doesn't sell as many cigarettes to women as Marlboro Lights, right?

A. No, but it's still important to note that it is the number one brand in terms of targeting toward women's brands.

Q. A lot of industries engage in market

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segmentation.

MR. HOAG: Let him finish the answer.

Q. I started my question first. You can come back to your answer.

MR. HOAG: He was starting an answer.

Q. Well, Mr. Solberg, you know how it went, so you can just say whatever you want at this point?

A. I'll finish my---

Q. Go ahead, please.

A. I'll answer and then I will answer the next question, because I was still sort of in mid-thought.

Q. I apologize.

A. That's all right. If you look at the advertising dollars -- and I think this is very important if you look at the amount of money put into Virginia Slims compared to Capri, Misty, Style. In fact, I believe that Capri and Misty and Style are all called sub-generics now. They have been moved down a notch. They are not premium brands, which Virginia Slims still is.

I think it's important that in terms of advertising dollars, the more money you put into a campaign, more likely the better results you are going to get.

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Q. All right. Studies have shown that the greater percentage of voice -- you know what I mean when I say that, right?

A. Uh-huh.

Q. -- voice out in the media, that tends to translate into more success for the brand, right?

A. I would agree with that, yes.

Q. Are you familiar with Pollay's study, The Last Straw?

A. P-o-l-l-a-y. Not P-o-l-e-t, as I've seen in many papers and depositions.

Q. You are familiar with Pollay's study, The Last Straw?

A. I have probably read it.

Q. But, I mean, that's what it says, the greater share of voice usually translated to greater brand share in the market, correct?

A. I would agree with that.

Q. Are you familiar with King's study in the 1998 February JAMA?

A. I probably read it, only because you asked me in the last deposition if I had read those articles, and I probably did read through it, but I don't remember exactly what it said.

Q. You are not relying on them? Because you

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haven't produced them.

A. Correct, no.

Q. Since you have read it, let me ask you this. In this article, I will represent to you, and maybe this will refresh your recollection, he classifies different cigarettes as being either youth brands or adult brands, and he says a cigarette is a youth brand if more than 2.5 percent of youth who smoke, smoke that brand. Are you with me so far?

A. Yes.

Q. First of all, does that definition make sense to you, as long as 2.5 percent of youth smoke this brand, it's a youth brand?

MR. HOAG: I am going to object to the form of the question in that you are stating out of context what an article says that you have already established that he's not, that this witness is not relying on.

So to the extent that he has to rely on what you are saying about the document to answer the question, I am going to move to strike the question and just object to any answer that he might give to it, because it would be pure speculation on his part unless he's read the article and is familiar with it without you giving him the answer to what's in the

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article in the question and he is now relying on the document.

MR. McCONNELL: All right. Let me rephrase the question.

Q. Do you think, just on your own, ab initio, without worrying about any article from the February 1998 JAMA, do you think it's proper to characterize as a youth brand any brand of cigarette where 2.5 percent or more of youth smoke that brand?

MR. HOAG: Object to form of the question.

A. I think there are cigarette brands that are very popular among youth. Not coincidentally, they are the same brands that are popular among adults. They are also the brands that are the most heavily advertised.

Q. My question is: Do you think just because more than 2.5 percent of youth who smoke, smoke a brand, that makes it a youth brand?

MR. HOAG: Object to form of the question in that you are using an expression that may have been used in an article that this witness does not rely on. Without defining what the words youth brand means and allowing the witness to actually look at the article and decide if he agrees

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with the definition as used in the context of that particular research, the question is broad, vague, ambiguous and unfair.

A. I was going to say before all of that that I would never use the term "youth brand." I just wouldn't. And I said earlier in this deposition that I don't believe you can separate the world into people under the age of 18 and those who are 18 and older, adults versus children. That's not how it works in this society.

Q. Do you know whether more than 2.5 percent or less than 2.5 percent of youth who smoke -- youth, I mean below 18 -- smoke Virginia Slims?

A. I don't know what the current data is right now.

Q. Is there anything else in this document that you are relying upon for your opinions in this case?

A. No.

MR. McCONNELL: Mark Exhibit 28, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 28 for Identification.)

Q. We have Exhibit 28 in front of this witness. It is entitled, A Survey of the Attitudes of Women

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on Their Role in American Society, prepared for Virginia Slims, November 1970, and the question, Mr. Solberg is: Why are you relying upon this massive document?

A. Well, I am not relying on all of it, but I am certainly relying on the background information right up front that discusses the importance of women making their views known. I think this goes along with the women's liberation movement at the time that this was prepared, and I am sure that that's why Philip Morris asked to have this done.

My feeling is that it's a document that provides a heck of a lot of information about what's important to women and how they feel about certain issues in our society, you know, to help them with marketing Virginia Slims.

Q. We have been talking a little bit in terms of Virginia Slims about targeting women, and the term of art usually here in the advertising circles is market segmentation. Have you heard that term?

A. I have heard that term.

Q. That's a standard term in marketing, correct?

A. Yes, it is.

Q. And it's something that's done by a lot of

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industries, right?

A. That's correct.

Q. And it's not thought of as being in any way disreputable, correct?

A. In terms of the tobacco industry?

Q. Well, just in general. Market segmentation, just generally.

A. It's a common practice in advertising and marketing.

Q. Now, because of the nature of cigarettes, do you think market segmentation by the tobacco industry is disreputable or deceptive or in any way subject to criticism?

MR. HOAG: Object to form of the question.

A. Well, you bring up a great point with that question, because I think you have to take a look at whether or not advertising gets anyone to smoke or not, first of all. And since we are talking about Virginia Slims and the women's segment here of the market, you could take a lock at Hispanic women in this country. Up until about six years ago, their smoking rates were less than 20 percent. I would say far less. It was probably about 16 percent in this country. It may have been longer ago than

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that.

I think that that was certainly a market that was tapped into in terms of finding and recruiting new people to smoke in that segment, because the research now shows, and the data from CDC now shows, it's up well over 20 percent.

Q. Are you reasonably certain that the increase in smoking among Hispanic women is attributable to cigarette advertising or attributable to cultural changes?

A. I think it's a combination of the two. I think those cultural changes are exploited because of the kind of information that a survey like this would provide. A survey like this on Hispanic women would provide a lot of information that could be used to target that very specific portion of our population.

Q. Well, looking at the issues that are studied here---

A. Let me give you an example. Yesterday, as I pulled into Miami, I picked up my Spanish-speaking version of People magazine, and let me just give you an example if I can find one here. Maybe I can't. Here it is. Now, that's a Hispanic woman featured in a Virginia Slims advertisement, what would appear

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to me to be a Hispanic woman. I mean, that's about as targeted as you can get.

Q. What does the ad say?

A. I don't speak Spanish, so -- it says that it's only for women. I can read that much. Virginia Slims, it's for the women.

MR. HOAG: Just so we can identify this, this is the September 1998 edition.

THE WITNESS: Of People, in Espanol.

A. So, in other words, you know, we are talking about target marketing now, we got onto the women and now Hispanic women, and I think this is a good example of the fact that they did pick out that very specific target market.

Q. Is there any falsehood in that ad, as far as you can tell? I know you can't read it in Spanish, but do you know if there is anything false in that ad?

A. You mean like Virginia Slims is only for women? I don't know too many truck drivers who smoke Virginia Slims, so I don't know. There's a whole other thing over here where they can sign up for something, and I am not exactly sure what it is.

Q. It's not the Virginia Slims Adventure Team, is it?

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A. No. Well, I don't know. Maybe it is.

MR. HOAG: This magazine is in Spanish, so---

A. It just caught my eye yesterday when I came into town, and I thought it was a good example of how they can reach a very specific target market.

Q. When you say "targeting," you mean basically the targeting in that example that you brought in was in terms of targeting Hispanic women in that there appears to be a Hispanic woman in the ad and the ad was in Spanish, right?

A. Correct.

Q. In what other way was it targeting Hispanic women?

A. It's in a Spanish-speaking publication.

Q. Anything else?

A. People magazine, which is read primarily by women.

You know, again, I think that -- getting back to what we had talked about earlier, and smoking rates among Hispanic women, sometimes what we call culture is formed by the images that we see on a daily basis. And if those images are not seen and they are not given permission to light up, you know, by some sexy ads in Spanish-speaking magazines

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and publications or billboards and whatever, maybe it hadn't struck them that they could do so.

Q. Well, here's an ad for Quaker Oatmeal with a little kid. It's in Spanish. The kid possibly is Hispanic. I don't know.

A. Possibly.

Q. Is this targeting Hispanics?

A. I think that's targeting Hispanic women to go out and buy their children oatmeal, Quaker Oats.

Q. Anything wrong with that?

MR. HOAG: Quaker Oats?

MR. McCONNELL: With Quaker Oats targeting Hispanic women to get them to buy their product.

A. I think we're getting away from the other products that we are talking about, which is cigarettes.

Q. Right.

A. So let's just say for the sake of argument you are looking at lung cancer rates among Hispanic women and you look 10 years ago and you found that the lung cancer rate is not very high, and you look 10 years from now and you discover that it's gone up dramatically. That's not going to be a coincidence, I don't think. In fact, I will predict that that

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will happen, and I can fairly accurately make that prediction based on the smoking rates among Hispanic women.

Q. So it comes back to the nature of the product. If it weren't for the nature of the product, you would say there really is no difference in terms of techniques in terms of the targeting, right?

A. It comes back to the fact that the industry says that advertising doesn't cause anyone to take up smoking, and that is not true. It has an influence on the decision to take up smoking. There is no question.

If you want to blame this completely on peer pressure and you want to cite, you know, people like what's his name, Dr. Levitt, Eugene Levitt, or whatever his name is, the guy who was, if I'm not mistaken, a clinical psychologist, cited no, nothing in his research -- there were no citations made from the advertising world. So he's off in his corner hermetically sealed, doing his work on how teens interact with teenagers, but he's not considering, you know, the advertising world. And if it was only peer pressure, why, why is the number one brand among children, among kids, Marlboro? Why is it a

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Marlboro if it's simply peer pressure?

Q. Because it's the number one brand among everybody.

A. It's also the most advertised brand. We already discussed, and you agreed, that what we were talking about, the Pollay study, the louder the voice, the more the advertising dollars are pumped into a brand. So you can't on one hand say that it doesn't recruit young people or anyone to take up smoking.

Q. Well, no, but Pollay's study was only about brand share, not about initiating smoking.

A. But if you are going to agree with the notion, with the theory that advertising, cigarette advertising, the more money you put into a brand, the more market share that is probably going to have, in other words, influencing people's buying behavior, you can't say that that doesn't have an influence on somebody who hasn't started smoking yet.

Q. Isn't there a difference between deciding to enter the product category, whether I smoke cigarettes or not, and that's on the one hand, and the other is now I am in the product category, I smoke, I am going to choose which brand I smoke, I

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am going to think about switching from whatever brand to another?

A. You are asking if there is a difference?

Q. Is there any difference between the two?

A. You have to ask the question whether or not there is a difference in the way an advertisement works. That's what Philip Morris and the rest of the companies are trying to say, that this advertisement only works this way.

It doesn't work this way, and yet it's out there for everyone to see a million times a day. We are barraged with it. They can't control that.

Q. Let me ask you something. Do you have a cat?

A. Not anymore.

Q. You used to have a cat.

A. I used to have three cats.

Q. Do you ever see---

MR. HOAG: Now we're getting somewhere in this deposition.

Q. Did you ever see cat food commercials?

A. I have seen cat food commercials.

Q. Some of those cat food commercials are pretty clever, aren't they?

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A. I'm trying to remember the last cat commercial I saw.

Q. Morris, Meow Mix?

A. Talking cats and -- sure.

Q. Do you think those commercials make somebody go out and buy cat food or, God forbid, buy a cat?

A. They may. I don't know. They are going to have -- if someone owns a cat, they are going to have an influence on their buying behavior and you are going to say -- and I am going to say if someone owns a package of cigarettes, okay---

Q. Right.

A. That's what you want. That's what you want to distinguish. I'm saying, let's take it away from the issue of smoking, which is a health behavior, or it's an action, an activity, and let's put it on the consumer and call it a consumer behavior, which is what all of the advertising agencies deal with on a daily basis, consumer behavior. You are talking about the actual purchase of a package of cigarettes. And Philip Morris and R.J. Reynolds and the rest of the companies cannot say that their advertisements do not influence the purchase of their product, because they do.

Q. They influence the purchase of their brand

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as opposed to somebody else's brand?

A. It influences the purchase of the product. Period.

Q. Do you really think and do you have any evidence anywhere in your reliance documents, any evidence whatsoever, that a kid who does not smoke sees an ad for a cigarette and says, "Oh, gosh, I think I will start smoking"? Is there any evidence of that?

A. I just told you you distinguish between an activity of smoking and the other activity, which is buying behavior. Okay? And I am saying that an advertisement, cigarette ad, has an influence on a children's -- on a child's buying behavior, plain and simple.

Q. Let's assume that a kid has decided he wants to smoke because he wants to hang with the tough crowd, or whatever, okay?

A. I am just -- again, I am not talking about whether or not this one ad or series of ads got someone to take up smoking. I am saying it has an influence on a child's buying behavior. And there is no way that Philip Morris or RJR or anyone else can control that billboard, magazine advertisement or whatever, within certain parameters. They cannot

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control the message in terms of a buying behavior.

Q. You say "buying behavior." I am just trying to tease out exactly what the buying behavior is. The distinction I am trying to get at and question you on is, first, buying behavior in terms of entering the categories; that is, I am going to start either, A, buying cigarettes, smoking, or, B, buying cat food, or, C, fabric softener. You know what I mean by entering a category? I am going to start using this product that I never used before.

The other is, now that I am in the category, now that I've decided I'm going to smoke, to choose Marlboro as opposed to Camel or Meow Mix as opposed to Friskies, something like that. When you talk about buyer behavior, what is it you're talking about?

A. I am talking about the activity of buying a product, period.

Q. Buying a product or buying a brand?

A. Buying a product.

Q. Do you have any evidence in any of the documents that you rely upon showing that cigarette advertisements make minors decide to start smoking as opposed to choosing one brand versus another?

MR. HOAG: Object to form of the

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question.

A. I will state what I stated before, that cigarette advertising influences -- I am not just saying children, but everybody's buying behavior.

Q. Where in your reliance documents is there any evidence of that, that cigarette advertising makes kids start smoking?

A. I didn't say that.

Q. Okay. You can clarify it for me.

A. I just restated it. It influences buying behavior.

Q. Is it possible that -- I'm not going to say is it possible. Can you be reasonably certain that the way in which cigarette advertising influences buying behavior among minors is by making them choose one brand instead of another brand?

A. That might be one way, sure. Certainly that's one way that it influences buying behavior.

Q. To what extent is it the other way; that is, it makes them start smoking, something they otherwise wouldn't have done except for those ads?

A. Again, you are talking about the culture, the society in which, you know, it's ubiquitous. It's everywhere. Every day we are bombarded to buy something. Sooner or later we buy something, but

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it's the advertising that helps us decide to buy.

Q. To buy a brand or to buy a product?

A. To buy a product. Both. I mean, it's both. I am not going to -- I am not going to deny that peer pressure doesn't have some importance in this factor. But you can't blame everything on parents and peer pressure. You can't. What happens with orphans who smoke? I mean, they don't have parents.

Q. They have peers.

A. They may or may not. You cannot blame -- that's why I said earlier the industry is not responsible in that regard. They have taken no responsibility for what their advertising does. They have tried to say what it doesn't do, which is not accurate, because they can't control for what they are saying it doesn't do. They cannot -- you can't put a billboard on, you know, U.S. Highway 95 out here and say that that is not going to have any influence on children.

Q. Well, I think---

A. That's impossible.

Q. I think you are overstating what the tobacco companies claim. Now, let me just put it to you that the tobacco companies claim that advertising does not force minors, does not induce minors to

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start smoking. There is no denial that the advertising may affect the brand choice. I put that to you, all right?

Now my question to you is: Are there any documents in your reliance set that show to the contrary; that is, that show that cigarette advertising makes a minor smoke when they otherwise would not smoke?

MR. HOAG: One second. Just to clarify, are you saying that there is no denial on the part of the tobacco industry that cigarette advertising affects a minor's choice of cigarette brand?

MR. McCONNELL: Brand, yes. If that's the case, let's separate that out. So let's pull that out on the table.

A. I understand what you are saying.

Q. The only issue now is, does cigarette advertising make somebody start smoking --

A. The problem with the argument that you are making for the industry---

Q. -- and is there a document that says that?

A. The problem with that argument is you're trying to separate portions of advertising and what they might do. In other words, if you -- that's why

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I use the word "influence." I don't say it causes someone to take up smoking, but it certainly influences someone's buying behavior. It says to a teenager, for example, that the product is available for whatever the cost of the product is. That's up to them whether or not they are going to buy it. I am not saying that it's forcing them to go in and pick up a package of cigarettes, but it influences their buying behavior.

Q. My question is: Is there a document anywhere in your reliance set that shows that the nature of that influence on buying behavior is such as to induce entering the product category of cigarettes as opposed to choosing a brand? I am just asking if you have got a document anywhere in your reliance set that shows that.

A. I don't know. I would have to review my documents again. Probably. I am sure that there is.

Q. Can you think of any?

A. The only reason I am saying that is there are other products that are advertised, some of which are specifically for children, and there are many children who have never, ever bought that product in that product category. One of them might

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be a video game, Sega, Sony Play Station, whatever, and then they buy that. Advertising influences that buying behavior.

Q. Well, talking about kids, I mean, kids don't need advertising to want to have toys, right?

A. But I'm saying, you can't make an argument that says that advertising for cigarettes is somehow different than other advertising targeted to children and saying that it doesn't influence them to enter a new product category, because it does.

Q. Well, for other products, you tell me what other products have advertising that induces kids to enter into the product category.

A. There's all kinds of them. Ever heard of Pogs? Come and gone. Right, that's a trend. Leo Burnett probably predicted that trend and predicted when it would leave. They do more studies on children than anyone.

Here's a personal example. At one time in this country nobody owned Pogs. No one. Not a single person owned Pogs. So how can my friend over here tell me to go buy Pogs when no one owned them yet? How did the first kid get his Pogs and how did the second kid? How did the first kid in each state get their Pogs? How did the first kid in each city?

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Q. I never saw a Pog ad in my life.

A. You never read comic books? Come on. Were there Pog ads?

Q. We're far afield.

A. We're getting way off.

MR. HOAG: Wait a second. Finish your answer. You were in the middle of the answer and he asked you something else. You were talking about Pogs and you were talking about kids and what happens to them and the Pogs and why they did what they did related to Pogs, but you hadn't finished when he asked you the question.

A. The only reason that I brought up the example of Pogs is because it was a new product category for every child in this country. And you asked me, can I name something among children, a product among children that showed where advertising would influence someone to go buy Pogs. They had to hear about them somewhere. Whether that was a point of purchase display at the five and dime, whether that was in the back of a comic book, whether that was in a trading card store, it's still advertising. It is still advertising.

Q. All right. Name one Pog advertisement. Describe one to me.

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A. I don't commit those to memory. I have comic books that have Pog advertisements. I also have trading cards that have advertisements for Pogs.

Q. I want to go back to this People magazine that you brought in. I'm going to show you this other ad. It shows a woman with red lipstick, dark hair, holding a cigar and holding a drink, probably a Bacardi drink inasmuch as it is an ad for Bacardi. Do you think that's targeting Hispanic women?

A. Yes, I do.

Q. There she is with a cigar and a glass of alcohol. Do you think that that's to be condemned, this targeting?

A. If you want to take a look at the statistics among alcohol consumption among Hispanic women, there's a lot of people that would say yes, that's pretty sickening.

Q. I want to know what you're thinking.

A. We're not talking about the alcohol issue.

Q. I am asking because I want to draw the comparison.

A. Again, I think that's a target market that the alcohol industry discovered that they hadn't tapped into it.

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Q. Back to this document, Exhibit 28, looking at the issues that are discussed, there are topics like Women's Place in the Home, Working in a Man's World, Women on Sex, Coping with a Man's World, Women as Citizens, On Race and Violence, On the Economy, et cetera.

Does this document discuss attitudes toward smoking or is it more a general discussion of women's attitudes?

A. It's more a general discussion of women's attitudes, that's correct. Now, this was the first of several surveys of attitudes of women that Philip Morris had done. There was one in the 1980s, I think it was around 1987, called the Virginia Slims Survey. They had sort of renamed the whole thing. And they surveyed, I don't remember how many thousands of women, but it was quite a few, and the news media coverage of that one survey was huge, the results of that survey. It made Oprah Winfrey. It made local and national television news and it was presented as if -- in fact, believe it or not, Philip Morris hired a public relations firm to monitor the number of mentions of Virginia Slims on television or in newspapers or radio shows to count the number of times the Virginia Slims logo showed

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up as a result of the survey being covered, which clearly documents the fact that they were very interested to see what kind of publicity they got on television and radio, despite the fact that they are not supposed to be advertising on television and radio.

MR. McCONNELL: Let's mark Exhibit 29, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 29 for Identification.)

Q. My question is: Why are you relying upon this document, which is entitled: Visit to Philip Morris Research Center, July 31, 1971?

A. I'm not. I don't know why it was in there. Sorry.

Q. Nothing to be sorry about. You've just saved us all some time.

MR. McCONNELL: Mark this as Exhibit 30, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 30 for Identification.)

Q. This document is entitled: 1978, The Assets. My question is, why are you relying upon

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this?

A. These are all assets of the industry in this survey. I'm not sure who did this one. It could have been done internally, I'm not exactly sure, but the fact that cigarette -- the problem of cigarette smoking is not really what people are concerned about in this year, 1978. The fact that smoking actually increased between 1976 and 1978, these are all assets that the industry is describing here.

I don't know that I am necessarily relying upon this for my testimony. I think this may have been slipped in because I found it interesting. It may not---

Q. But you don't think you were relying on it?

A. I don't think I am. This is really covered in a lot of other stuff here.

(Thereupon, a document was marked as Defendant's Exhibit No. 31 for identification.)

Q. In the packet of documents that you sent us, the packet, boxes---

A. Sorry.

Q. No. Included among them, and I may mark these as individual exhibits or I may not, depending upon your answers, there were four different addresses by Joseph F. Cullman, III, to stockholders

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or security analysts, two to stockholders and two to security analysts.

Let me ask you the general question: Do you know why you are relying upon these documents for your opinions in this case?

A. No, because I have the financial reports that he would have made in their annual reports. I already have those speeches anyway. There might be one there where he had notes from the AMA-ERF meeting in 1968, and that would have been the one that I was going to include.

Q. Is there any other reason why you would be relying upon Cullman's addresses, either to stockholders or security analysts?

A. No.

Q. We're back to Virginia Slims, Mr. Solberg. This document is entitled Product Promotion Plan, relating to Virginia Slims, filter and menthol. My question is: Why are you relying upon this document?

A. Nothing, other than the fact that they discuss sampling and that the Virginia Slims promotion was the best ever recorded in the introduction of a new cigarette.

Q. What is the significance of that, that it

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was a very successful introduction?

A. Well, I think that it really discusses the fact that they were able to reach a segment of the population that they had not tapped yet with a specific brand for that segment.

Q. Adult women smokers?

A. Women of all ages.

Q. Does it say that here, that they reached women of all ages?

A. Let's just say, okay, for the sake of argument here, that the smoking age in some states at this time, 1968, was 15, 16. I mean, they could legally smoke. And as that age increased over the years, Virginia Slims didn't change anything. If anything else, they got more sophisticated and became more prevalent in the media.

So if they developed an ad campaign for women, and 15- and 16-year-olds could smoke at that time, what says that -- today the smoking age is 18 in most states -- that it doesn't have an influence on 15- and 16-year-olds anymore?

Q. Are you familiar with the current Virginia Slims campaign?

A. Which one?

Q. "It's a Woman Thing."

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A. Yes.

Q. Do you have an opinion about that, as to whether or not that induces anybody to start smoking who otherwise wouldn't?

A. I think you really need to look at the imagery that's used, especially with Super Slims, and try to understand the teenage mentality, especially when you take a look at the data discussing anorexia in this country and the desire to be thinner and slimmer at a very young age; in fact, getting younger and younger.

I think it's not a coincidence that that is exploited in Virginia Slims advertising. The woman that we saw in this magazine, the Latino woman, is stretched out anyway. Her body is made longer than it really is.

Q. Sort of an El Greco effect?

A. That's the image that's been used and continues to be used for Virginia Slims, right here. I don't know where it is.

Q. I think it's -- there is a card -- there it is. Why do you say she's stretched out? You are saying you think the picture is distorted?

A. Not in that particular ad.

Q. It doesn't look like it.

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A. I think she's naturally thin.

Q. You were talking about young girls that were anorexic. The fact remains that the percentage among those minor females in this country who smoke cigarettes, the percent who smoke Virginia Slims is quite low, under 5 percent.

MR. HOAG: You are talking about what period of time?

MR. McCONNELL: Currently, 1990s.

Q. And then I will also ask you for the '80s and '70s.

Do you know what the numbers are?

A. I have already answered that question earlier and said that the number one brand among teenage women is Marlboro Lights, I believe.

Q. All right. I am just asking, do you know for any period of time what percentage of minor females in this country smoked Virginia Slims?

A. Again, we had this discussion earlier. We talked about all of the women brands the teenage girls would be smoking. I said -- and you added up Virginia Slims, Capri, Misty, Style, whatever the rest of them are out there -- you would probably find, and I don't know this to be a fact or not, but I am saying my guess is that you would find that

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that number is higher than Marlboro Lights is by itself.

Q. That's a guess at this point, correct?

A. That's a guess. But I don't -- I don't think that it's any coincidence that the imagery used in Virginia Slims is designed to tap into teenage women's insecurities about themselves.

Q. Well, you have gained access to a number of internal documents regarding the marketing of Virginia Slims. Is there anything in any of those documents that demonstrates an intent by Philip Morris to play upon the insecurities of females under the age of 18?

A. Let's say women's insecurities in general. How about that?

Q. I want to focus on minors at this point.

A. Teenage women have many of the same insecurities that women in their early 20s have, or their late teens. I'm sure that they do.

Q. Well, there is a difference, though, between the insecurities of adolescents and the insecurities of somebody over 21, don't you think?

A. What's the difference in terms of looking at anorexia, for example, and a desire to be thin among a teenage girl and a mid-20's woman? If they

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haven't received treatment for that problem by their mid-20's, the prevalence of those problems is still the same. It doesn't go away all by itself, necessarily.

Q. Let me first ask you if you saw, in any of the Virginia Slims marketing documents, any indication of an effort to play upon the insecurities of minors. That's first. Then, second, I will ask you about females in general.

A. Again, you are separating the adult world from the child world. I don't think that you can do that. I am saying that the surveys that they have conducted regarding Virginia Slims have looked at the pluses and minuses in the life of a woman in our society in the United States, and the advertising campaigns that have been developed over the years have utilized the results of those surveys in their very campaigns. In fact, in some cases, those surveys were the campaigns. Virginia Slims is an extension of the athletic physique and figure that women, including teenage women, desire, especially when they are 15-year-old tennis players.

Q. Did you ever see any statements in any Virginia Slims marketing documents which discusses trying to get nonsmokers to start smoking?

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A. In any marketing documents?

Q. Yes.

A. No, I did not.

Q. I was talking about Virginia Slims. Let me broaden that. Did you ever see such a statement in any marketing document for any brand that discusses getting nonsmokers to start smoking?

A. No pun intended, but that would be the smoking gun then that you could use against the industry.

Q. Well, did you ever find that smoking gun?

A. In terms of their written word in a document, no. In terms of their advertising and what they do in real life, yes.

Q. Well, that's your interpretation of their advertising, right?

A. You know, let's just say I wouldn't go, and I don't have children yet but you have children, and I don't think you would go to the Camel Mud and Monster Show without your children. Joe Camel used to be there signing autographs. Those are real events that existed. Children got in free, depending on their age, and sometimes under 12 got in for half price.

You know, what is that kind of event for?

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Why does NASCAR -- NASCAR is so worried about losing their tobacco dollars and so worried about, you know, cigarette advertising possibly getting to teenagers at their events, why do they let kids in for half price? Because they encourage the family to bring the kids to the events.

That's why I say, when the companies advertise, they target everybody, especially in the context of the family. They love family affairs, I mean, the family affairs and family events.

Q. As you just said, with much wisdom for somebody who doesn't have kids yet, a father sometimes finds it difficult to go someplace without his kids, right?

MR. HOAG: Object to the form of the question. Mischaracterizes his prior answer.

Q. If I got it wrong, you tell me. I thought that's what you said, a father sometimes has a difficult time going to a Joe Camel event without bringing the kids.

A. That's not what I said.

Q. Okay.

A. What I said was the very policies at these events, at these venues, encourage parents to bring their children with them.

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Q. Well, isn't what really is happening is that the kids are getting in for half price because that's the only way to get the father to come in? He's got to go with the kids and if the kids get in for half price, it's now economically possible for the father to go.

A. You just brought up an incredible point.

Q. Please.

A. That the event was designed for children to bring their parents with. Now, you may not have said that in so many words --

Q. God, I hope not.

MR. HOAG: That's what I heard.

A. -- but I think when the Camel Mud and Monster Show and the Camel Super Cross and the Winston Cup Races are promoted on television with the logos -- we can provide copies of the videotapes, too, and I think we probably already did -- you are talking about Saturday morning cartoon television. That's when they appear. And those are locally done. It's a local ad. And it says Camel Super Cross right on the screen and shows all these motorcycles jumping over things.

The participants in those races, do you know how young they are? In a Camel Super Cross race,

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ages six and seven years old for their two-lap tour. You're talking about 15- and 16-year-olds who are professional motorcycle, motocross racers, wearing Camel logos all over their jerseys.

Q. Talking about Camel for a moment, isn't it a fact and haven't studies shown that Joe Camel was actually used by many parents as a vehicle to instruct their children not to smoke?

A. Are you citing some research that we should be looking at or considering?

Q. I know it's out there. I can't cite it. I don't have it in front of me. I'm asking if you are aware of it.

A. I'm aware of some of the research done on Joe Camel. Lucy Henke, or whatever her name is, is a great example of a woman who purports to be a researcher in advertising who applies a 45-year-old theory to today's methods of communication and media strategies. That's crazy and that's ludicrous.

Q. What 45-year-old theory?

A. Piaget, or whatever his name is. It's the cognitive development theory developed by Piaget in 1950-something.

Q. You think it's not a valid tool anymore?

A. Not when you apply it to today's

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advertising. How could that be? I don't even know that it would have been. I wasn't alive at that time so I can't really comment on that, but I don't think it would have been very relevant at the time he developed it to apply it to some of the advertising going on at that time.

Q. But you think it is currently a valid tool in analyzing child psychologies?

A. In terms of child development, I think cognitive -- the theories of -- there are several theories, but his theory about cognitive development in terms of awareness and knowledge that children have, certainly that plays a part in their development, there is no question. But to try to apply that to advertising theories developed on Madison Avenue is ludicrous. It's crazy.

Q. Henke is not actually the one I was thinking of, but the question stands. Are you aware of any studies where Joe Camel is actually used by parents as a way of teaching their kids not to smoke?

A. I have never heard of that. I know of a Roper study commissioned by R.J. Reynolds on Joe Camel. They did no such thing in that study. Henke didn't do anything like that in her study. If there is another study that you have in mind, I

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don't know of it.

Q. You remember talking about Winston and NASCAR racing? Is Winston a popular cigarette among youth?

A. I think it probably ranks about fourth or fifth among young people.

Q. Well, sir, I'm sorry. Certainly Marlboro, Camel and Newport rank ahead of Winston.

A. Camel is not far ahead of Winston, but it is, I believe, at this point.

Q. Do you know what percent of youth, who smoke, smoke Winston?

A. I don't know the exact percent, but I know it's roughly in the 5 -- 4, 5, 6, 7 percent range.

Q. Would you be surprised to learn it's under 2.5 percent?

A. It may. I mean, it's changed. Let's take a look at the trends in terms of their buying behavior, which goes up and down. You know, I will talk to some teenagers who say, you know, when I say, "Oh, you smoke, what brand do you buy, do you buy Marlboro?" -- "No, I buy Camel."

"What do you buy Camels for? I thought everybody bought Marlboro."

"That's right. Everyone does buy Marlboro.

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I bought Camel to be different."

If you look at the trends among, you know, the brand preferences among teenagers who smoke, trends fluctuate from year to year.

MR. McCONNELL: Mark this as the next exhibit, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 32 for Identification.)

Q. Mr. Solberg, this is a Philip Morris interoffice correspondence from Victor DeNoble to Dr. Dunn, dated August 24, 1981. My question is: To what extent are you relying upon this for your opinions in this case?

MR. HOAG: Excuse me. Did I get a copy of that one?

MR. McCONNELL: I'm sorry.

A. I am not sure why I put this in here. I know I have seen presentations by Victor DeNoble in the recent three or four years. In fact, some of these charts even -- I believe these are some of the slides that he uses in his presentation. But I'm not relying on this for my testimony.

Q. Okay. Where have you seen his current presentations?

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A. Various conferences. I don't remember all of them. I know one of them was in New Mexico, I believe. One of them was in the northeast somewhere. I don't remember.

Q. In those conferences that you have seen, has DeNoble claimed that he was able to show at Philip Morris that nicotine was addictive?

A. Yes, he made that claim.

Q. You have at least looked at some of his documents produced while at Philip Morris, correct?

A. Some. I don't know that many. Probably five or six.

Q. Have you seen any documents where he in fact said nicotine was not addictive?

A. I have seen one document that I recall where he made that statement to his superior, who I believe was Dunn at that time---

Q. In this---

A. In terms of---

Q. I'm sorry.

A. In terms of the actual methodology that he was using for that particular study. That was a comment that he had made in a very brief report, I think it was only two or three pages long, to William Dunn.

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Q. You said you are not relying on this document; is that right?

A. No, I am not.

MR. McCONNELL: Mark this as 33.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 33 for Identification.)

Q. Mr. Solberg, there are a series of documents back and forth between Philip Morris and Hoffman-LaRoche. I will show you this first one. Maybe we can cut through it and not have to look at the rest, depending on your answer.

My question is: To what extent are you relying upon the dealings between Philip Morris and Hoffman-LaRoche in supporting your opinions in this case?

A. I'm not. I don't know why these were copied.

Q. Okay.

A. Well, I do, because it was my fault. I'm the one who copied the documents.

MR. McCONNELL: Mark this as Exhibit 34.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 34 for

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identification.)

Q. This is a document dated May 19, 1972, Philip Morris interoffice correspondence. Subject: Advertising Recall and Image of 100-Millimeter Brands, January through March Data, derived from the National Telephone Tracking System. Is this a document that you are relying upon?

A. Only insofar as to defend some of the research that has been done, in terms of what's published in the medical literature. Some of the research that's been criticized by the tobacco industry has been used, some of the exact same methodology, to take a look at the influence of cigarette advertising and recall.

I just thought it was very inconsistent for the industry to criticize research that uses the same methodology. They may have been -- they may have been -- the companies may have been criticizing the conclusions, I guess, that were drawn in those articles.

Q. What criticisms did you have in mind?

A. As I think back now, some of the criticisms have been the same standard line about, advertising doesn't cause children to smoke kind of a thing, when I don't think that those studies ever intended

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to suggest that it did. It was simply to document the recall, the knowledge of, the influence of the advertising on children. Some of them used eye tracking, actually, to look at recall and what they actually recalled in the contents of cigarette advertising.

Q. Would you agree that in the period from when Virginia Slims was introduced, through 1972, it had a pretty significant advertising presence?

A. I would agree with that, yes.

Q. I mean on TV, when it was on TV, there were a lot of ads?

A. That's correct.

Q. You can probably remember the tune for the Virginia Slims song, right? "You've come a long way---"

A. "You've come a long way, baby."

Q. You've got the tune right.

A. I did. I was alive at that time.

Q. "To get where you got to today. You've got your own cigarette now, baby. You've come a long, long way."

Now if you look at page -- 741 is the Bates number. This is Table 3, Consumer Perception of Amount of Advertising Seen.

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A. I'm sorry. 741?

Q. That's the Bates number.

A. Okay.

Q. Consumer Perception of Amount of Advertising Seen. And for Virginia Slims, the awareness figure for 1971 was only 41.2 percent and for 1972 only 45.9 percent, right?

A. Uh-huh.

Q. That's a "yes," right?

A. That's correct, yes.

Q. Virginia Slims had the highest numbers, correct?

A. Yeah. We don't know what they are comparing it to. I'm assuming that the redacted information there is other cigarette brands.

Q. Probably competitors, right?

A. Most likely.

Q. Because Parliament is not blacked out.

A. Correct.

Q. That's another Philip Morris brand. And Parliament's numbers are extremely low, aren't they?

A. Actually, those are pretty high numbers, considering it wasn't on television at that point.

Now, in terms of overt advertising, I mean, this data suggests to me -- and this is how I read

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the data -- that 41.2 percent of all of the women they surveyed recalled having seen Virginia Slims advertising.

Q. Well, less than half.

A. I am just reading the question here. Okay.

Q. Is it fair to say in this time period, up through say 1972, that Virginia Slims was probably the second or third most advertised cigarette brand? Marlboro was certainly first, right?

A. Yes.

Q. Winston at this point was probably pretty high, correct?

A. I would say probably Winston and even Camel were probably higher than Virginia Slims at that time. I may be wrong.

Q. What was the Camel campaign in 1970 or '71?

A. That would have been the guy climbing the rocks with the funny curly hair, the blond Afro, if you will.

Q. He wore khaki?

A. I mean, they used him up through, I don't know, probably '83. I believe those started to appear in the '70s. It may not have been early '70s. I would have to double-check that.

Q. I can't recall what the Camel campaign was

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for '71, but I was wondering if you remembered.

A. It was too late for more people to smoke Camel than any other cigarette because that was in the '40s and '50s and into the '60s. I don't recall off the top of my head. But I would agree with your statement that Virginia Slims was certainly the top five in terms of promoted products, I would agree, at that time frame.

Q. Yet the recall level was still 41.2 percent for '71, 45.9 for '72, correct?

A. That's what I'm reading, yes.

Q. And recall doesn't mean that you go out and buy the product, right?

A. No, certainly not.

Q. Advertising is this kind of a hierarchy of facts; you have to be aware, then you have to have knowledge, then you have to have an attitude to buy the product, correct?

A. That would go along with Piaget's theory from 1958.

Q. I don't think that's Piaget.

A. Yes, actually, it is. Awareness is the first step in cognitive development in adolescents.

Q. I am talking about advertising discipline. You get awareness, then knowledge, then attitude

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about the product, which leads to behavior, correct?

A. Yes. Although, I would disagree. I think that attitude sometimes comes before knowledge. Sometimes it does.

Q. Is that because some cigarette ads don't really impart much information at all?

A. Well, I think advertising in general doesn't impart a lot of information. I mean, a picture is worth a thousand words applies very much so to advertising. I mean, that's why -- I mean, the attitude most often toward a lot of products, not just cigarettes, comes oftentimes before knowledge does.

Q. Have you ever heard of the term informational advertising versus transformational advertising?

A. No, I haven't. I have heard the term informational advertising before. I have not heard the term transformational advertising.

(Thereupon, a document was marked as Defendant's Exhibit No. 35 for Identification.)

A. This is a number of documents.

Q. Yes. This appears to be a collection of documents, mostly including advertisements; is that right? From Parliament and Virginia Slims?

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A. Correct.

Q. Even though this may be a collection of documents, if you can, just tell us to what extent you are relying upon any of the material among these documents.

A. Primarily, the fact that Leo Burnett handled the Virginia Slims account was of particular importance based on -- well, there's a number of factors that entered my mind as I went through these documents. One of them was, and I mentioned this before, that Leo Burnett has probably done more research on children and kids' consumer behavior and marketing to kids and so on and so forth than any other ad agency that I am aware of, at least the ad agencies that I'm aware of. There may be other agencies that I don't know about that do more research in that field, but Leo Burnett, there is no question that they are regarded as one agency that does a lot of research on children.

Q. What is your basis for saying that?

A. Advertising Age will tell you, they used to have -- I think they started it in the mid-'70s. It may have been later than that, 1980, roughly. They had a -- they've got a research department that just handles research on children. I mean, it's a

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subdivision in their research department. They used to publish something called "What's Hot Among Kids," or something like that.

They sent that out to all their clients. I'm not exactly sure if that started in the late '70s or around 1980, somewhere in there, and to my knowledge they still do. Maybe not -- the name of the publication may have changed, but it's an area that they have pursued.

Q. Is there any evidence that Leo Burnett's knowledge on marketing to kids was applied in marketing cigarettes?

A. I don't know how you could, as an advertising executive, as an advertising creative designer, work in an advertising agency on numerous accounts, which they do, and not carry with you any of the information you have learned in the research that that firm does.

Q. But advertising agencies have so-called Chinese walls built within them all the time, don't they, just like law firms do?

A. I would actually consider it like the Maginot Line, rather than the Chinese wall.

Q. At least you know ostensibly that advertising agencies have problems whereby they

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create these so-called Chinese walls to prevent information from one component of the agency getting to another, where it perhaps could be a competitor or something like that?

MR. HOAG: Object to form of the question.

MR. McCONNELL: I don't blame you. Let me rephrase that one.

Q. Are you familiar with the concept of a Chinese wall?

A. Yes.

Q. It has something of a pejorative sound to it, I suppose, but you understand the concept, correct?

A. I understand the concept, yes.

Q. You understand how it's applied within an advertising agency?

A. And other kinds of organizations; law firms, for example, yes.

Q. Why don't you just, for the record, explain to us what it is.

A. Well, ideally, it would work in a way that put restrictions on one area in a firm. If you worked in that area, you wouldn't work, for example, in another area.

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Q. Do you know -- I'm sorry. Continue.

A. I understand how you are asking me if that applies to advertising agencies, and I'm sure that to some extent it does. I think the problem occurs when, number one, you have people within those same agencies assigned to new accounts, when you have the tobacco industry especially, not so much Philip Morris with their premier brands, but other companies, switching from ad firm to ad firm, so you have one year Young and Rubicom representing RJR and Camel and then the next year you have another ad agency and then back to Young and then you end up with Mezzina-Brown. What were the clients before Mezzina-Brown had Camel? I don't know. Did they work on a youth campaign? They certainly might have.

So I think that the idea of having a Chinese wall to prevent knowledge and information being utilized by the employees and staff members of an advertising agency really is very hard to control.

Q. But you don't know of any specific evidence showing application by Leo Burnett of their knowledge regarding youth marketing in working on behalf of Philip Morris, do you?

A. I know that there are people who worked on

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Kraft and General Foods accounts who have also worked for -- on cigarette accounts. I think that could be very relevant.

Q. What Kraft or General Food products do you have in mind?

A. Cereal products.

Q. Can you name those people where Leo Burnett worked on both?

A. I could find those names for you. Sheila Feichtner is a person who worked for Leo Burnett who is no longer with that company for those very reasons. That was at least one reason that she stated. I could track her down and find out exactly who was there.

Q. I don't think I have the power to compel you to track her down, but I appreciate the thought.

Are any of these ads in this exhibit, in your opinion, deceptive?

A. Yes.

Q. Okay. Tell me which ones, please.

A. The first ad.

Q. The Parliament ad?

A. Yes.

Q. "It works like a cigarette holder works," that one?

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A. Yes. "The cigarette holder keeps tobacco away from your lips." That's a great example. The word you used was "deceptive."

Q. Correct.

A. They will talk about everything in the advertisements that a filter might do except for the fact that it's not going to protect the person from the smoke reaching their lungs, for example. I think that's very deceptive.

Q. It doesn't say that, does it? It doesn't say the filter will keep the smoke from reaching your lungs?

A. That's my whole point.

Q. That would be deceptive, right? But they are not saying that, are they?

A. What they should be saying is the filter is a fraud. The filter is a complete rip-off. This is like, you know, toilet paper wadded up and we are presenting this actually does something for you.

Q. That would be great for Leo Burnett to put that together. How long would they have that account for the product? "Don't buy our product. It's a fraud." Do you really think that's what they should say?

A. It would be much more honest. You were

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asking what I thought about the advertisement, whether I thought it was deceptive. I think it is deceptive by omission, yes.

Q. It says that the cigarette holder has a tough outer shell. Well, that's true, isn't it, that the cigarette holder has a tough outer shell?

A. I can't tell from this advertisement. I will make the assumption yes, it's true.

Q. In general, cigarette holders, is it fair to say---

A. Sure.

Q. "The cigarette holder is firm enough to bite on." True or false?

A. A Parliament cigarette, those are hard plastic kinds of things, I believe.

Q. "The cigarette holder keeps tobacco away from your lips." That's true, isn't it?

A. It depends on what end you would light up, I guess.

Q. If you light the proper end it's going to keep the tobacco away from your lips, correct?

A. What's the proper end, though?

Q. The end with the tobacco. Do you really think people are lighting up the filter and putting the other side in their mouth?

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A. People have done it.

Q. Is that a true statement or false statement, in your opinion, that the cigarette holder keeps tobacco away from your lips?

A. If it's used as they intend the product to be used, that's true.

Q. If it's used in the way the vast majority of people use it, it's true?

A. Certainly.

Q. "The cigarette holder lets you taste the flavor, not the filter." True or false?

A. It's assuming that there is flavor in the cigarette.

Q. You might not like the flavor, but you smoked. There's some flavor in a cigarette, right?

A. True. It might be good or bad flavor, but yes.

Q. Are there any other ads in this exhibit that you believe are deceptive?

A. "Virginia Slims announces a special offer for faces." What? That you can have more wrinkles than the other brands? What is this?

Q. Well, this is an ad that invites you, as a 21-year-old-or-older smoker --

A. To get makeup brushes.

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Q. -- to get makeup brushes. How is that deceptive?

A. I think that is the most honest cigarette ad I have seen, because it's suggesting that you will need a makeup kit if you smoke Virginia Slims.

Q. Are there any other ads here that you believe are deceptive?

A. Again, I will say that the very nature of cigarette advertising, which is to provide an image and no information about the health effects of the product, is very deceptive by the omission of that information.

Q. Have you ever seen a cigarette ad that in your opinion is not deceptive?

A. That's a good question, and I think that there are some that are more deceptive than others, not simply based on the content -- the content, I think, is the most important -- but also based on the context of the advertisements. Some are more than others.

I think, again, by the very nature of the advertisements, cigarette advertising in general, that it is deceptive. It does not provide the consumer with appropriate information for that consumer to consider.

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Q. So the answer is no, you have never seen a cigarette ad that you think is not deceptive?

A. That would be correct.

Q. Look at Bates No. 743, this Virginia Slims ad.

A. I have that.

Q. Do you think that's a deceptive ad in any way, in addition to the way you have already mentioned, the sin of omission?

A. Certainly.

Q. In what way?

A. It's suggesting that women who smoke Virginia Slims will be slimmer. It says, "Slimmer than the fat cigarettes men smoke."

Q. That's a true statement, isn't it?

A. Again, what is it I'm providing? Do you want to take these words and images literally as they are? I mean, do you want to take these the way advertising works or do you want to sit here and analyze it and play media literacy games, you know?

Q. Well, a Virginia Slims cigarette is thinner than a Marlboro cigarette, isn't it?

A. Some are and some are not.

Q. Which ones are not?

A. They actually are longer. Some are the

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exact same size around that a Marlboro cigarette is.

Q. I've got a question regarding a statement made by Dr. Blum in the genocide tape. Are you familiar with that?

A. I've seen it. It's been some time since I have watched it.

Q. I will represent to you that he made the statement that cigarette ads targeting African-Americans invariably involve menthol cigarettes. Are you familiar with that notion as espoused by Dr. Blum?

A. Yes.

Q. That's a "yes"?

A. Yes. Sorry.

Q. This is an ad you would say that's targeting African-Americans, correct?

A. I can't tell if that is an African-American or not, to be honest with you.

Q. You can't tell?

A. I can't.

Q. Would you at least agree that the Virginia Slims brand, the packages that are shown in this ad, include a menthol and a filter non-menthol cigarette? Can you tell that?

A. It's hard to know. I mean, I know the color

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of Virginia Slims Menthol. If I could see the green and whatever stripes on the side of the pack, I would agree with that.

Q. You can't tell from this copy?

A. Not from the photocopy.

I mean, seriously, I can't tell for sure if she is or not.

Q. Is there anything deceptive in the remaining ads beyond the omission of additional health information?

A. Again, there are several other -- some of them are the exact same one I noticed. Some of them also mention the -- they compare the slim to the fat. That's about it.

MR. McCONNELL: Exhibit 36, please.

(Thereupon, the document referred to was marked as Defendant's Exhibit No. 36 for Identification.)

Q. This is a smoking attitude study dated October 1967, prepared for Ted Bates & Company, correct?

A. Yes. Bates & Company is an ad agency used by, I forget what company. Probably Philip Morris.

Q. In what sense are you relying on this document?

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A. I think this gets into the role of government, what role government should play or could play, what role these respondents feel government could or should play in the tobacco issue.

Q. Are you talking about -- I'm sorry. Continue.

A. No. For that matter, it's the opinions of however many people they surveyed here, a thousand people, 1900 people, I guess, that they surveyed, and they are asking them about what role should government play and what role should the tobacco industry play in response to the role the government plays.

Q. Well, it appears that 82 percent of the respondents believe that the U.S. government should warn people against cigarette smoking, right?

A. Right. It also says that 46 percent agree that advertising causes people to smoke. I think that's a fairly significant finding. So pretty soon, you know, the tobacco industry, I think for the most part, when it comes to whether cigarette smoking causes lung cancer, they already belong to the Flat Earth Society and are alone in the corner by themselves, not willing to listen to the rest of

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the world, whereas on the advertising issue they have painted themselves into a corner. I think even the American public believes, at least in 1967 when the survey was done, that cigarette advertising does in fact cause people to smoke. 46 percent of them said it did.

I think that, you know, even more importantly, 80 percent of the people said that the tobacco industry should tell the truth to the public, which they never did, certainly not in '67. They still haven't done it.

I think that's what these cases are all about. I think some of these same people were probably surveyed -- let me just double-check here. Well, none of them were selected from the state of Florida, but certainly some of these people are being represented in cases this very day because they didn't get the truth in 1967 when they were asking for it.

Q. Anything else?

A. No.

Q. You were mentioning before about how the tobacco industry, you believe, is in the Flat Earth Society, not only in denying causation but also denying the effect that advertising has on the

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initiation of smoking; is that right?

A. Yes. I think -- I would say, just to clarify what I meant by that in terms of the advertising components of that statement, that they are still denying that they have any influence on children.

Q. Well, are they in the Flat Earth Society in denying that cigarette advertising causes people to start smoking as opposed to choosing brands?

A. I think when you take a look at a survey like this in 1967, I don't know what the results would be like today, when these respondents, 46 percent of them said that cigarette advertising does cause, I think that's an important point that the industry should have paid attention to in 1967. They may not have been in the problems they have today. Certainly it plays a factor. And I have said this many times today and in my previous deposition, there is no question that advertising plays a role in influencing the initiation of smoking.

Q. What role?

A. We discussed it until I'm blue in the face. It influences consumer behavior, the purchase of the product.

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Q. Have you looked at the academic literature on the issue as to whether or not cigarette advertising causes people to start smoking as opposed to choosing a brand?

MR. HOAG: Object to form of the question. Overly broad, vague.

A. What literature are you talking about?

Q. Literature in the Journal of Advertising, Journal of Consumer Research, Journal of Advertising, Journal of Marketing.

A. I've looked at some, sure.

Q. Isn't it true---

A. Like Henke, we mentioned earlier. That was in the Journal of Marketing, I believe.

Q. Isn't it true that the overwhelming academic literature on the subject concludes that cigarette advertising does not cause people to start smoking?

MR. HOAG: Object to form of the question.

A. Those same studies that you are citing, a large number of them, at least the ones I have looked at in that area of academics, do not deny that it influences buying behavior.

Q. Right. Do not deny that it influences brand choice, right?

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A. I'm saying buying behavior. At some point in time someone who starts to smoke buys a package of cigarettes. That is buying behavior. There is one day, the day before they bought that pack of cigarettes, they didn't do that. And then they bought a package of cigarettes.

Q. Right. But do you deny that the vast majority of academic literature on the subject of cigarette advertising has concluded that cigarette advertising does not have an effect on whether or not people start to smoke?

A. Do I deny that?

Q. Yes. Do you deny that?

A. I'm going to tell you right now that my review of the literature suggests that there are people, even in the advertising world, who are fighting over that very topic.

If you were to go and -- you know, let's bring in the practice of advertising at the same time. Let's bring in those like Sheila Feichtner, who have worked for ad firms like Leo Burnett and leave because of what's going on at that advertising agency because they see what's happening and they don't like it. They think it's unethical and immoral and they leave for those very reasons.

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I think, you know, those -- I think, you know, a study of those who have left Leo Burnett and other ad agencies with cigarette accounts because they didn't like what was going on would be an important study. It would add to that area of academics.

Q. Let me restate my question, and that is, you say you have looked at the literature.

A. Some of the literature. I can't say I have looked at the entire body of literature. It's impossible.

Q. You have looked at a fair amount; is that true?

A. I have looked at a number of articles.

Q. A number of articles regarding the effect of advertising, right?

A. That's correct.

Q. Isn't it true that most of those articles, if not virtually all, conclude that cigarette advertising does not affect primary demand for cigarettes?

A. I would say that a majority, not close to all, that a majority of them point to peer pressure as the primary role in the initiation of smoking. But you are talking now about taking people in the

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academic world of advertising, and they are now talking about behavior, health behavior.

I am saying if they simply stick to what they know best, which is consumer behavior and how advertising influences consumer behavior, which is different than the behavior of smoking -- I have distinguished that many times. Smoking behavior is a health behavior. It's an activity that people do. Buying behavior is a consumer behavior. And they are trying to mix them up.

Q. Would you agree that since the 1940s the amount of money spent by tobacco companies on advertising and promotion has steadily increased?

A. That's correct.

Q. But the percentage of people who smoke cigarettes has steadily decreased?

A. That is also correct.

Q. Since your deposition in Houston last time, have you done any other additional work on this case besides gathering these documents?

A. No, I have not.

MR. McCONNELL: I don't have any other questions. I appreciate your time.

(Discussion off the record.)

CROSS EXAMINATION

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BY MR. HOAG:

Q. I don't know the number on the document, but it's "1978, The Assets." Do you have that document? I know you do. I just don't know the number of it.

A. No. 30.

MR. McCONNELL: Do you know how far down in the stack it was? Got it.

MR. HOAG: If you can pull that out, I would like for the witness to look at that document.

Q. Referring to the page toward the middle of the document, Bates Stamp No. --

A. I can't read it.

Q. -- 59002, it's the page right after 59001.

A. Yes. "The Liabilities."

Q. That's says "Liabilities" on it, correct?

A. Correct.

Q. So everything after that, what's being listed there are liabilities, as far as the tobacco industry is concerned; is that fair?

A. That's how I understand the document.

Q. Referring to Bates Stamp No. -- the last four numbers are 9010, could you go to that?

A. Yes.

Q. At the top it says: "There is widespread support for antismoking education in the schools and

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at the very early years."

Now, they are referring to this as a liability; is that correct?

A. That's the way I understand the document.

Q. Is that in any way inconsistent with public statements made by representatives of the tobacco industry, in your opinion, that it would be a liability to the tobacco industry?

A. Well, if you can compare it to the public statements, that they say "We don't want children to smoke," that should have been an asset, actually, if there was support for education in schools, telling children not to smoke. The document was 1978. It's contrary to their public statements about educating children.

Q. Do you have an opinion as to why this would have been considered to be a liability by the tobacco industry, that there is widespread support for antismoking education in the schools at the very early years?

MR. McCONNELL: Objection. Calls for speculation.

Q. You can answer.

A. Well, the tobacco industry's job, which it is, is to sell more cigarettes. I think that any

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antismoking efforts to educate anybody at any age would be a liability to the industry, that they would consider that a liability, and certainly it would be a liability to the industry if there was more education in public schools, despite the fact that they say they would support those ideas.

MR. HOAG: I don't have any other questions.

MR. McCONNELL: I've got a couple follow-ups.

REDIRECT EXAMINATION

BY MR. McCONNELL:

Q. On this document, Mr. Solberg, do you believe that the statistics in this document are the kind that you as an expert can reasonably rely upon?

MR. HOAG: I'm going to object to the form of the question, the word, use of the word "statistics."

A. I can rely on this document based on what is written here, sure.

MR. McCONNELL: No further questions.

(Thereupon, the deposition was concluded at 5:35 p.m.)

_____

ERIC SOLBERG

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Sworn to and subscribed before me this

_____ day of _____, 1998.

_____
Notary Public in and for the
State of Florida at Large

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CERTIFICATE OF OATH

STATE OF FLORIDA:
COUNTY OF DADE:

I, the undersigned authority, hereby certify that ERIC J. SOLBERG personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 10th day of September, 1998.

Mary J. Wick
Notary Public - State of Florida
My Commission No.: CC 452618
Expires: April 16, 1999

MARY J. WICK
Notary Public, State of Florida
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REPORTER'S CERTIFICATE

STATE OF FLORIDA:
COUNTY OF DADE:

I, Mary J. Wick, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing deposition of ERIC J. SOLBERG; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 10th day of September, 1998.

Mary J. Wick, RPR

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